

Official Bond of County Clerk—Failure to File With the County Treasurer Within Time Provided by Law—Clerical Omission of Copying Bond in the Proper Record—Effect of.

The failure to file an official bond with the County Treasurer within the time specified by law does not render the office vacant, when the bond was recorded in the office of County Clerk and Recorder and deposited with the County Treasurer for filing.

Edgar P. Reid, Esq.,
County Attorney,
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My dear Mr. Reid:

I have your letter in which you ask for an official opinion on the following question, to wit:

“Does the fact that the bond of a County Clerk, executed, approved and filed for record in the office of the County Clerk within 30 days after receiving notice of his election, was not filed with the County Treasurer within 30 days after receiving notice of his election, render the office of County Clerk vacant?”

The sections of the statutes of this State covering this matter are as follows:

"Every official bond must be filed in the proper office within the time prescribed for filing the oath, unless otherwise expressly provided by statute." (Sec. 377, R. C. of 1907.)

"Whenever a different time is not prescribed by law, the oath of office must be taken, subscribed and filed within thirty days after the officer has notice of his election or appointment, or before the expiration of fifteen days from the commencement of his term of office, when no such notice has been given." (Sec. 364, R. C. of 1907.)

"Unless otherwise prescribed by statute the official bonds of county, township and school district officers must be approved by the judge of the district court, and filed and recorded in the office of the county recorder." (Sec. 380, R. C. of 1907.)

"The official bond of the county clerk must, after being recorded, be filed in the office of the county treasurer, and the safe keeping of the same is hereby made the duty of the county treasurer." (Sec. 417, R. C. of 1907.)

In the case before us, every part of the statutes was complied with, except the actual clerical act of copying the bond in the book entitled "Record of Official Bonds" and filing the same with the County Treasurer. The question is: Does this operate to vacate the office? In other words, are the provisions of the statute so mandatory in character as to render the slightest non-compliance therewith fatal to the tenure of office? I think this is too narrow a construction to be placed upon the law.

Section 4651, Revised Codes of 1907, says:

"An instrument is deemed to be recorded, when, being duly acknowledged or proved, and certified, it is deposited in the county clerk's office with the proper officer for record."

There is no claim in the case that this official bond was not deposited with the proper officer to be recorded within the required thirty days. Therefore, the bond was executed and recorded within the time fixed by statute, and up to this point is valid. Now, is the filing of the bond with the County Treasurer, after being recorded, a part of the necessary procedure to qualify the officer in question to hold his respective office?

Mechem on Public Officers, Sections 265, 266, says:

"The statutes requiring a bond to be given ordinarily prescribe that it shall be given within a fixed time after the officer's election or appointment. These provisions as to time, however, though often couched in most explicit language, are usually construed to be directory only and not mandatory.

"A failure to file the bond within the time prescribed does not, therefore, ipso facto, work a forfeiture."

It has been held that the Wisconsin statutes providing for the filing of the oath of office of a county judge in the office of the clerk of the Circuit Court and requiring that his bonds shall be recorded by him in the office of the register of deeds are not strictly mandatory, and the office does not become vacant by reason of the fact that the judge-elect files his oath of office in the office of the county clerk instead of the office of the clerk of the Circuit Court, or by reason of delay in recording his bonds.

State ex rel. Dithman v. Bunnell, 131 Wis. 198, 11 A. & E. Ann. Cas. 560.

The same rule is followed in the State of Washington, in the case of State of Washington ex rel. Lysons v. Ruff, 16 L. R. A. 140.

The failure to file the bond with the County Treasurer is, in my opinion, now immaterial. The bond was recorded when it was deposited in the County Clerk's office and entered on the Reception Book for record. The bond has in fact been deposited with the County Treasurer, and any question of it not being filed in time is cured. The act of filing is ministerial and not judicial.

Therefore, it is my opinion that no vacancy exists in the office of the County Clerk in question, and the present incumbent is the duly qualified official.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.