



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

July 27, 1976

ATTORNEY GENERAL OPINION NO. 76- 234

Mr. Daniel A. Young
Douglas County Counselor
7 West 11th Street
Lawrence, Kansas 66044

Re: Courts--Clerks--Bond

Synopsis: From and after January 10, 1977, there is no statutory requirement that the chief clerk of a judicial district or the clerk of the district court of any county, or deputies or assistants thereto file a bond. The board of county commissioners may not require such a bond under K.S.A. 19-4201 *et seq.* However, a bond may be required by rule of the court, and the amount thereof fixed by such rule.

* * *

Dear Mr. Young:

You advise that a question has arisen concerning the requirement, if any, of a bond to be filed by or on behalf of the clerk of the district court from and after January 10, 1977.

K.S.A. 19-1301, repealed by ch. 145, § 246, L. 1976, formerly provided for the election of a clerk of the district court in each county. K.S.A. 19-1303 provided for the appointment of deputies by the clerk so elected, and the bonding requirements applicable to these persons:

"Each of said clerks [elected in each county organized for judicial purposes] may appoint one or more deputies in his proper county, and the appointment of every such

Mr. Daniel A. Young
Page Two
July 27, 1976

deputy shall . . . continue during the pleasure of the clerk; and every such clerk may secure one or more corporate surety blanket or blanket position bonds, or individual bonds, issued by a company authorized to do business in this state covering any or all of his deputies and employees in such amount or amounts as may be recommended by said clerk to and approved by the board of county commissioners. . . . Cost of said bond or bonds covering said deputies or employees shall be paid from the county general fund; and said clerk shall be liable on his bond for any default, neglect or misconduct of his deputies or employees: *Provided*, In such cases the bond of the clerk shall be excess only over any valid and collectible blanket or individual bonds covering the deputies or employees primarily liable "

This section was not repealed. The section refers to a bond procured by a clerk of the district court elected in each county, covering deputies and employees thereof appointed by said elected clerk. As you point out, under ch. 146, § 31, L. 1976, the administrative judge of each judicial district shall appoint a chief clerk, and in multi-county judicial districts, that judge shall also appoint a clerk of the district court in each of the counties. The administrative judge shall also appoint the deputies, assistants and other clerical personnel of the clerk in each county.

Technically, by its express terms, the bonding requirements of K.S.A. 19-1303 apply only to elected district court clerks, and to deputies and assistants appointed by them. It does not apply, on its face, to chief clerks of judicial districts, to appointed district court clerks serving in each county, and to their assistants and deputies who are appointed by the administrative judge in each district.

Certainly, the first portion of K.S.A. 19-1303 is repealed by necessary implication, for its appointment provisions flatly contradict those of ch. 146, § 31, L. 1976. It may be argued that nonetheless, the bonding requirements of this section should be deemed to continue in effect, there being nothing in ch. 146, L. 1976, or any other 1976 enactments directly in conflict therewith. However, those bonding provisions apply to elected clerks, and to deputies appointed by them. With the appointment of deputies and assistants to the district court clerk directly by the administrative judge of the district, there is little reason for the surviving requirement that the clerk shall be liable on his or her bond for any default, neglect or misconduct of

Mr. Daniel A. Young
Page Three
July 27, 1976

his or her deputies or employees. Accordingly, I cannot but conclude that the first two clauses of K.S.A. 19-1303 have been repealed by necessary implication, and that the remaining portion of the section has no application to chief clerks, clerks, assistants and deputies appointed by the administrative judge pursuant to ch. 146, § 31, L. 1976.

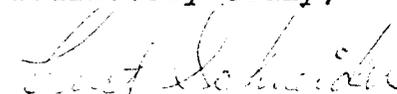
There remains the question whether a bond may be required and provided under K.S.A. 19-4201 *et seq.* Under K.S.A. 19-4202, the board of county commissioners may designate which "appointive officers and employees of said county shall be required to give surety to the state of Kansas and said county" This section does not apply to district court chief clerks, clerks, and their deputies and assistants, for they are not officers and employees of the county. They are officers and employees of the district courts, which are not entities or instrumentalities of the county.

Thus, in my judgment, there exists no present statutory requirement of a bond to be filed on and after January 10, 1977 for the chief clerk of any district court, the clerk of any district court, or the appointed deputies and assistants to such clerk. I agree with you, however, that under ch. 146, § 31, L. 1976, a bond may be required by court rule:

"The chief clerk and other clerks of the district court and such deputies, assistants and other clerical personnel shall have such qualifications as are prescribed for such offices by statute, rule of the district court and rule of the supreme court."

The amount of the bond could be fixed by court rule. The cost of the bond would remain a personal responsibility of the clerk or deputy involved, unless payment of that cost was authorized from the budget of the court by court approval.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj