84-00202

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MAR 22 1984

Honorable Robert Bates
Circuit Clerk
32nd Judicial Circuit
Cullman County Courthouse
Cullman, Alabama 35055

COURTS - DETINUE ACTIONS -
BONDS - CLERKS

General discussion of detinue bond required by Code of Alabama 1975, §6-6-250(a).

Dear Mr. Bates:

The office of the Attorney General has received your opinion request concerning the bond required by Code of Alabama 1975, §6-6-250(a), to be executed at the time of filing of a detinue complaint. Section 6-6-250(a) provides as follows:

> "(a) When an action is commenced for the recovery of personal chattels in specie, if the plaintiff, his agent or attorney makes affidavit that the property sued for belongs to the plaintiff and executes a bond in such sum and with such surety as may be approved by the clerk, with condition that if the plaintiff fails in the action, he will pay the defendant all such costs and damages as he may sustain by the wrongful complaint, it is the duty

> of the clerk to endorse on the summons that the sheriff is required to take the property mentioned in the complaint into his possession unless the defendant gives bond payable to the plaintiff, with sufficient surety, in double the value of the property, with condition that if the defendant fails in the action he will, within 30 days thereafter, deliver the property to the plaintiff and pay all costs and damages which may accrue from the detention thereof." (Emphasis supplied).

You state in your request that a detinue complaint was filed in your office for the seizure of several vehicles, along with "a detinue or costs and wrongful damage bond in the amount of $500.00." You further state that the detinue complaint did not provide an alternate value of the property, and therefore, you would not approve the bond. You ask whether you acted properly in refusing to approve the bond in light of the Opinion of the Attorney General to the Honorable John B. Green, Circuit Clerk, 30th Judicial Circuit, under date of February 19, 1981. Basically, your question is whether the bond required at the time of filing of a detinue complaint must be for the amount of the value of the property.

In the prior opinion of our office, issued on February 19, 1981, we responded to the question of what amount a clerk should require a bond to be posted in order to be protected under §6-6-250(a). We stated that "the Code is silent on the particular amount of the bond, except to specify that it is to include such 'costs and damages' as the defendant might sustain by a wrongful complaint." It is our opinion that these "costs and damages" are those related to court costs, attorney fees, etc. However, in our prior opinion, we attempted to give a general rule of thumb to aid clerks in determining the amount of the bond as "costs and damages" are not readily ascertainable and vary from case to case. We stated that "[perhaps] the most sensible rule of thumb would be to assess the bond at the market value of the property...and to add to that amount an estimation of any apparent damages that would naturally flow to the defendant as a result of a judgment against the plaintiff." We point

out that we were not establishing a strict formula to be applied in every case. The amount of the bond is left to the discretion of the clerk. In our opinion the value of the property does not have to be stated in the first bond. The only instances in which the value of the property is required to be stated by the Code are when the defendant posts his replevy bond pursuant to §6-6-250(a) and when the plaintiff posts a second bond pursuant to §6-6-250(b).

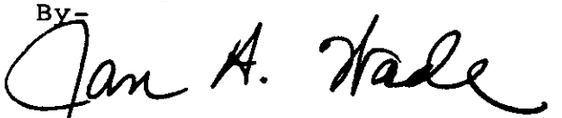
You also ask about the liability of the clerk "if he did not properly require that this first detinue bond be for a sufficient amount for costs and damages as the defendant may sustain by the wrongful complaint...." It is our opinion that quasi-judicial immunity is available to clerks under certain limited circumstances. Generally, this immunity applies to discretionary acts which are essentially judicial in nature and which require the exercise of personal deliberation, discretion and judgment. See, "Liabilities of Clerks and Registers," issued by the Administrative Office of Courts. The determination of the sufficiency of the amount of a bond is a discretionary act and it appears that clerks would be immune from suit in such situations.

In your request you also give several examples of possible damage to property after seizure and of loss as a result of seizure. You ask whether these damages are recoverable under the first detinue bond. In our opinion damages such as these would more properly be addressed to the second detinue bond.

I do hope this response sufficiently answers your inquiry. If, however, we may be of further assistance, please do not hesitate to contact us.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General
By-



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CAG/JAW/cg