CHAPTER 9

Delivery of Books, Records and Money to Successor

**SECTION 8‑9‑10.** Delivery by officer of books and papers to successor.

 A person removed from office or whose elected or appointed term expires shall deliver on demand to his successor all the books and papers in his custody as officer or in any way appertaining to his office. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than one year, or both.

HISTORY: 1962 Code Section 50‑201; 1952 Code Section 50‑201; 1942 Code Section 837; 1932 Code Section 837; Civ. P. ‘22 Section 785; Civ. P. ‘12 Section 472; Civ. P. ‘02 Section 434; 1870 (14) 453; 1993 Act No. 184, Section 144, eff January 1, 1994.

Effect of Amendment

The 1993 amendment rewrote this section, adding at the end “and, upon conviction, must be fined in the discretion of the court or imprisoned not more than one year, or both.”

CROSS REFERENCES

Applicability of Sections 8‑9‑10 et seq. to the South Carolina Research Authority and its employees, see Section 13‑17‑170.

Delivery of codes and supplements to successors, see Section 8‑15‑40.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 79, All Officers and Public Employees.

**SECTION 8‑9‑20.** Successor may demand books and records from any person having possession of them.

 If any person appointed or elected to any office shall die or his office shall in any way become vacant and any books or papers belonging or appertaining to such office shall come to the hands of any person, the successor to such office may, in like manner as prescribed in Section 15‑63‑130, demand such books or papers from the person having them in his possession. And if such books or papers are withheld an order may be obtained and the person charged may, in like manner as provided in Section 15‑63‑140, make oath of the delivery of all such books and papers that ever came to his possession and, in case of omission to make such oath and to deliver up the books and papers so demanded, such person may be committed to jail and a search warrant may be issued and the property seized by virtue thereof may be delivered to the complainant, as prescribed in Section 15‑63‑140.

HISTORY: 1962 Code Section 50‑202; 1952 Code Section 50‑202; 1942 Code Section 837; 1932 Code Section 837; Civ. P. ‘22 Section 785; Civ. P. ‘12 Section 472; Civ. P. ‘02 Section 434; 1870 (14) 453.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 79, All Officers and Public Employees.

NOTES OF DECISIONS

In general 1

1. In general

Only prima facie title to office need be shown. A proceeding under this section [Code 1962 Section 50‑202] does not pass upon the merits of the respective claims to the office. The sole inquiry is whether petitioner has shown prima facie title to the office. Jennings v. Green (S.C. 1951) 219 S.C. 471, 65 S.E.2d 878.

**SECTION 8‑9‑30.** Delivery by officer of moneys on hand to successor.

 Every State or county officer entrusted with funds by virtue of his office upon retiring from office shall turn over to his successor all moneys received by him as such officer and remaining in his hands as such officer, within thirty days from the time when his successor shall have entered upon the duties of his office, in the same manner as he is required by law to turn over the furniture, books and papers. The successor shall receive and be responsible for the moneys so turned over to him in the same manner as he is liable for other moneys received by him officially. Any public officer neglecting or refusing obedience to the requisition herein contained shall be guilty of a misdemeanor and, upon conviction, shall be liable to a fine of one thousand dollars and imprisonment not exceeding twelve months, besides his liability on his official bond, at the suit of any person aggrieved by such neglect.

HISTORY: 1962 Code Section 50‑203; 1952 Code Section 50‑203; 1942 Code Sections 1524, 3069; 1932 Code Sections 1524, 3069; Civ. C. ‘22 Section 756; Cr. C. ‘22 Section 471; Civ. C. ‘12 Section 674; Cr. C. ‘12 Section 544; Civ. C. ‘02 Section 605; Cr. C. ‘02 Section 387; G. S. 457, 779; R. S. 304, 523; 1874 (15) 674; 1885 (19) 158; 1904 (24) 375.

CROSS REFERENCES

Responsibility of probate judge for books and property of office, see Section 14‑23‑680.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 70, Handling of Public Funds and Trustee Relationship.

S.C. Jur. Public Officers and Public Employees Section 79, All Officers and Public Employees.

NOTES OF DECISIONS

In general 1

1. In general

Officer is presumed to have performed duties. While this section [Code 1962 Section 50‑203] has reference to all moneys in the hands of outgoing treasurers, yet the presumption is that the outgoing treasurer has performed his duties, especially those made mandatory by another statute, and that he would have in hand of State’s money only that collected within fifteen days prior to his going out of office. State v. Maryland Cas. Co. (S.C. 1939) 189 S.C. 405, 1 S.E.2d 516.

Cited in Fleming v. McLure (S.C. 1933) 171 S.C. 147, 171 S.E. 804.

Statements and settlements are not conclusive and are open to correction of errors negligently or fraudulently made; but where no improper conduct is charged against an officer he is entitled to all of the information that could possibly throw light upon the issue of irregularity or negligence or proof of damage. Pickens County v. Hinton (S.C. 1930) 158 S.C. 465, 155 S.E. 881.

And motive for offense is immaterial. The offense under this section [Code 1962 Section 50‑203] consists in the omission to perform an official duty, and the motive and intent with which such offense is committed is immaterial. State v Assmann (1896) 46 SC 554, 24 SE 673. State v. Moore (S.C. 1924) 128 S.C. 192, 122 S.E. 672.

And officers holding over without qualification. A county treasurer held over for another term without qualification, held office until qualification of his successor, and was within this section [Code 1962 Section 50‑203], making it a crime to fail to pay over moneys to successor. State v. Mason (S.C. 1921) 118 S.C. 171, 110 S.E. 128.

As well as Penitentiary superintendent. Section embraced position formerly known as superintendent of Penitentiary. State v. Neal (S.C. 1901) 59 S.C. 259, 37 S.E. 826.

Words sufficient for indictment. While it is preferable to follow the words of this section [Code 1962 Section 50‑203], equivalent words are sufficient to support the indictment thereunder. State v. Assmann (S.C. 1896) 46 S.C. 554, 24 S.E. 673.

Failure to turn over money is sufficient charge. An indictment which charges that a clerk of the court for a certain county “failed” to turn over to his successor money received by him as clerk is sufficient under this section [Code 1962 Section 50‑203]. State v. Assmann (S.C. 1896) 46 S.C. 554, 24 S.E. 673. Public Employment 1063

Without alleging failure to turn over all moneys. An indictment under this section [Code 1962 Section 50‑203] charging a clerk of the court with neglecting to turn over to his successor in office a certain sum of money received by defendant from a particular estate is sufficient without alleging neglect to turn over all moneys in his hands as clerk. State v. Assmann (S.C. 1896) 46 S.C. 554, 24 S.E. 673. Public Employment 1063

No demand for moneys is necessary for conviction. Under this section [Code 1962 Section 50‑203], it is not necessary to prove a demand on the outgoing officer by his successor for such moneys before a conviction can be had. State v. Assmann (S.C. 1896) 46 S.C. 554, 24 S.E. 673. Public Employment 1053

This section [Code 1962 Section 50‑203] covers funds officers should have. This section [Code 1962 Section 50‑203] applies not only to money actually in the hands of an officer at the end of his term, but money which ought to be in his hands as such officer. State v. Assmann (S.C. 1896) 46 S.C. 554, 24 S.E. 673. Public Employment 1053

It applies to masters. Masters are included under the provisions of this section [Code 1962 Section 50‑203]. Peake v. Young (S.C. 1893) 40 S.C. 41, 18 S.E. 237.

**SECTION 8‑9‑40.** Representative of deceased officer shall deliver moneys to successor.

 Upon the death of any State or county officer entrusted with funds by virtue of his office, his personal representative shall pay over to the successor of such deceased officer all moneys which such deceased officer had in his hands officially at the time of his death within two months after he shall have assumed the administration of such estate. Upon his neglect or failure to do so, without good cause, the estate of such deceased officer and the sureties on his official bond shall be liable to pay to such successor the amount due, with interest at the rate of five per cent per month thereon, after the expiration of such term of two months, to be recovered by action brought by such successor for the benefit of the parties entitled to receive such money.

HISTORY: 1962 Code Section 50‑204; 1952 Code Section 50‑204; 1942 Code Section 3069; 1932 Code Section 3069; Civ. C. ‘22 Section 756; Civ. C. ‘12 Section 674; Civ. C. ‘02 Section 605; G. S. 457; R. S. 523; 1874 (15) 674; 1885 (19) 158; 1904 (24) 375.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 70, Handling of Public Funds and Trustee Relationship.