



JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

*State of Louisiana*  
DEPARTMENT OF JUSTICE  
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BATON ROUGE  
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May 11, 2015  
**OPINION 14-0151**

Ms. Malise Prieto  
Clerk of Court  
22<sup>nd</sup> Judicial District Court  
Parish of St. Tammany  
P.O. Box 1090  
Covington, Louisiana 70434

10 CLERKS OF COURT

La. C.Cr.P. art. 320

La. C.Cr.P. art. 320 prohibits the District Clerk of Court and the Deputy Clerk, as ministerial officers of the court, from using separate or community property to become a surety or provide money or property for bond statewide for themselves, spouses, family members, or friends. La. C.Cr.P. art. 320 does not prohibit the spouses of a District Court of Clerk and a Deputy Clerk of Court from using community property for bail.

Dear Ms. Prieto:

Our office received your request for an opinion on whether La. C.Cr.P. art. 320 prohibits the District Clerk of Court ("Clerk") and the Deputy Clerk of Court ("Deputy") from posting bond for themselves, spouses, family members, or friends. You have requested an opinion of the Attorney General addressing the following questions:

- (1) Are a Clerk and a Deputy considered ministerial officers of the court for the purposes of La. C.Cr.P. art. 320?
- (2) Does La. C.Cr.P. art. 320 prohibit a Clerk and a Deputy from posting bonds statewide?
- (3) Does La. C.Cr.P. art. 320 prohibit a Clerk and a Deputy from using personal or community funds to post a cash bond or purchase a commercial surety on behalf of themselves, spouses, family members, or friends?
- (4) Does La. C.Cr.P. art. 320 prohibit a Clerk and a Deputy from providing an unsecured personal surety for themselves, spouses, family members, or friends?
- (5) Does La. C.Cr.P. art. 320 prohibit a Clerk and a Deputy from using community property to post a secured personal surety on behalf of themselves or their spouses?
- (6) Does La. C.Cr.P. art. 320 prohibit a Clerk and a Deputy from using community property to post bond for themselves?

Louisiana Constitution Article 1, Section 18 provides for a constitutional guaranty of bail before and during trial, except for capital offenses where the proof is evident and the presumption of guilt is great. Bail is the security given by a person to assure his appearance before the proper court whenever required. La. C.Cr.P. art. 311. Bail may be with a commercial surety, a personal secured surety, an unsecured personal surety, cash bond or without surety (with or without security). La. C.Cr.P. art. 312.

Louisiana Code of Criminal Procedure Article 320 prohibits attorneys, judges and ministerial officers of a court from being a surety or providing money or property for bail and, in pertinent part, states:

A person shall not be released on bail for which an attorney at law, judge, or ministerial officer of a court becomes a surety or provides money or property for bail; but the invalidity of such bail shall not be a defense to an action to forfeit and enforce the bail.

Your first inquiry is whether a Clerk and a Deputy are considered ministerial officers of a court for the purposes of La. C.Cr.P. art. 320. Louisiana Constitution Article V, Section 28(A) states as follows:

In each parish a clerk of the district court shall be elected for a term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have other duties and powers provided by law. The clerk may appoint deputies with duties and powers provided by law . . . .

The Clerk is the legal custodian of all court records and is responsible for their safekeeping and preservation. La. C.C.P. art. 251. The Clerk is responsible for the issuance of all court processes and retaining all pleadings, documents and exhibits filed in court proceedings. La. C.C.P. arts. 252 and 253. The Deputy is subject to the supervision of the Clerk and may perform any of the duties and functions of the Clerk. La. C.C.P. art. 255. The Clerk and the Deputy may be held in contempt of court for failure to perform any ministerial duty. La. C.C.P. art. 257.

The courts have characterized the Clerk's duties as ministerial. The Louisiana Supreme Court held that duties of the Clerk are not only ministerial but mandatory. See *Lemoine v. Ducote*, 12 So. 939 (La. 1893). The Fourth Circuit Court of Appeal held that the Clerk has a ministerial duty to permit the inspection and copying of the court's records. See *Keko v. Lobrano*, 497 So.2d 353 (La.App. 4 Cir. 1986).

The Louisiana Supreme Court examined the act which is currently La. C.Cr.P. art. 320 in the case of *State v. Babin*, 50 So. 825, 826 (La. 1909), and interpreted ministerial officer of the court as follows: "[T]his act has reference exclusively to those officers,

such as judges, clerks, and sheriffs, and their deputies, criers, stenographers, etc., who more directly than the lawyer constitute the machinery of the court.”

While the comment made in *Babin* is dicta, it is the only available definition of the term “ministerial officer of a court,” as used in La. C.Cr.P. art. 320. Both “Clerks” and “Deputies” are expressly included in the definition provided by the *Babin* court.

In La. Atty. Gen. Op. No. 98-0128, our office relied on the definition provided in *Babin* to support its determination that La. C.Cr.P. art. 320 applied to a city police officer and that he would be considered a ministerial officer of the court.

Based on the above cited statutory provisions, the jurisprudence and our prior opinion, it is the opinion of this office that a Clerk and a Deputy are considered ministerial officers of the court for the purposes of La. C.Cr.P. art. 320.

Your second inquiry relates to whether a Clerk and a Deputy are prohibited from posting bonds statewide. In La. Atty. Gen. Op. No. 13-0072, this office was asked whether city police officers, as ministerial officers of the court, were prohibited from serving as sureties statewide. This office opined that the prohibition set forth in La. C.Cr.P. art. 320 is a statewide bar. In concluding that the prohibition was statewide, our office went through a comprehensive history of La. C.Cr.P. art. 320, which illustrates that the Legislature contemplated the prohibition as a statewide prohibition for attorneys, judges, and ministerial court officers. The legislative history discussed in La. Atty. Gen. Op. No. 13-0072 would be applicable to the question posed here and is as follows:

The first piece of law that limited who might be a surety from bail was adopted in 1880 and stated:

It shall not be lawful for any judicial or ministerial officer of any of the courts of this State, to go bail for any prisoner or other person in any prosecution or criminal proceeding in their respective courts, or to become surety for the appearance of any prisoner or other person before their respective courts to answer to any criminal charge.

As originally adopted, the legislation, though bearing similarities to the article today, only purported to restrain judges and ministerial officers of courts from acting as sureties on bail under the purview of their courts’ authority.

In 1928, a new Code of Criminal Procedure was adopted by the Legislature. The codification included the prohibition against judges and ministerial court officers from posting bail for criminal matters in their court. It also included a new provision that “no practicing attorney or counselor shall become security or bail for the appearance of any person charged with a felony or a misdemeanor in any criminal cause.” Juxtaposing these

two rules, the bar against attorneys was clearly meant to be a statewide bar where the judge and ministerial court officer bar was constrained to only matters within their courts.

When the Code of Criminal Procedure was revised again in 1967, these two provisions combined into then-Article 326, and the language is identical to present-Article 320, adopted in 1993. In the current version, there is no distinction between any officers, and instead, a general prohibition was enacted against attorneys, judges and ministerial court officers serving as sureties, and the Legislature removed any qualification as to how this prohibition applies. The Official Revision Comments which accompanied the 1967 Code of Criminal Procedure, when this new article was first adopted, states "[t]he state-wide application of this article to an attorney is retained from Art. 88 of the 1928 Code of Criminal procedure but statewide application to a judge or a court official goes further than former R.S. 15:88.1, which prohibited only going bail for persons charged in his own court."

La. Atty. Gen. Op. No. 13-0072. (footnotes omitted.)

Based on the legislative history and our prior opinion, it is the opinion of this office that La. C.Cr.P. art. 320 prohibits a Clerk and a Deputy from posting bonds statewide.

Your third inquiry relates to whether La. C.Cr.P. art. 320 prohibits a Clerk and a Deputy from using personal or community funds to post a cash bond or purchase a commercial surety on behalf of themselves, spouses, family members, or friends.

The starting point for the interpretation of any statute is "the language of the statute itself." *Theriot v. Midland Risk Insurance Company*, 95-2895 (La. 5/20/97), 694 So.2d 184. The basic tenets of statutory construction and interpretation are found in the Louisiana Civil Code and Title 1 of the Louisiana Revised Statutes. La. C. C. art. 12 states: "When the words of a law are ambiguous, their meaning must be sought by examining the context in which they occur and the text of the law as a whole."

La. C.Cr.P. art. 320 clearly states that no person shall be released on bail for which a ministerial officer of a court becomes surety or provides money or property for bail. The language of La. C.Cr.P. 320 is not ambiguous. La. C.Cr.P. art. 320 prohibits a ministerial officer from posting bail and does not make an exception to this prohibition for the ministerial officer, his/her spouse, his/her family members, or his/her friends. La. C.Cr.P. art. 320 prohibits a Clerk and a Deputy from using either personal or community

funds to post a cash bond or purchase a commercial surety on behalf of themselves, their spouses, family members and friends.<sup>1</sup>

Your fourth inquiry relates to whether La. C.Cr.P. art. 320 prohibits a Clerk and a Deputy from providing an unsecured personal surety for themselves, spouses, family members, or friends. As discussed above, there is no exception. La. C.Cr.P. art. 320 prohibits a Clerk and a Deputy from providing an unsecured personal surety for unsecured personal surety for themselves, spouses, family members, or friends.

Your fifth inquiry relates to whether La. C.Cr.P. art. 320 prohibits a Clerk and a Deputy from using community property to post a secured personal surety on behalf of themselves or their spouses.<sup>2</sup> La. C.Cr.P. art. 320 prohibits a Clerk and a Deputy from using community property to post a secured personal surety on behalf of themselves or their spouses.

Your sixth inquiry relates to whether La. C.Cr.P. art. 320 prohibits the spouses of a Clerk and/or a Deputy from using community property for bail for themselves. Subject to the provisions of La. C.C. art. 2347 which requires both spouses to concur in the alienation or encumbrance of a community immovable, La. C.Cr.P. art. 320 does not prohibit the spouses of a Clerk and a Deputy from using community property for bail for themselves.

In conclusion, it is the opinion of this office that a District Clerk of Court and a Deputy Clerk of Court are considered ministerial officers of the court for the purposes of La. C.Cr.P. art. 320. It is the further opinion of this office that La. C.Cr.P. art. 320 prohibits a District Clerk of Court and a Deputy Clerk from becoming a surety or providing money or property for bail statewide for themselves, spouses, family members, or friends. La. C.Cr.P. art. 320 does not prohibit the spouses of a District Clerk of Court and a Deputy Clerk of Court from using community property for bail.

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<sup>1</sup> The nature of the funds is immaterial as each spouse owns an undivided one-half interest in community property and either spouse may acting alone manage, control, or dispose of community funds. See La. C.C. art. 2336 and La. C.C art. 2346.

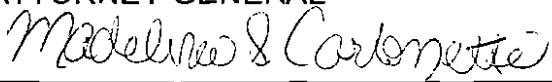
<sup>2</sup> A secured personal surety specifically mortgages immovable property located in the State of Louisiana. La. C.Cr.P. art. 318.

We hope that this opinion adequately addresses the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

BY:

A handwritten signature in cursive script, reading "Madeline S. Carbonette", written over a horizontal line.

Madeline S. Carbonette  
Assistant Attorney General

JDC: MSC:jr