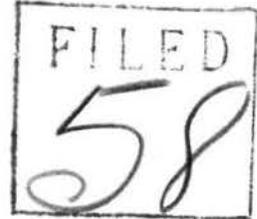


BUILDING & LOAN ASS'NS: (1) Officer or employee may furnish individual bond without "faithful performance of duty clause: (2) Bond cannot be cancelled without ten days notice in writing: (3) Supervisor of Building and Loan Associations may prepare form of individual bond in compliance with House Bill 166.

August 17, 1939

Mr. J. W. McCammon, Supervisor
Bureau of Building & Loan Supervision
Jefferson City, Missouri



Dear Sir:

Answering your request of August 14th, 1939, in reference to part of section 5591 R. S. Missouri, 1929, as set out in House Bill 166, passed by the Sixtieth General Assembly, and approved by the Governor, we submit the following:

I

Your first query in this request reads as follows:

"First, does the provision added to Section 5591, when it becomes effective, eliminate the statutory necessity of any Missouri state-chartered building and loan association, or officer or employee thereof, furnishing a bond containing the 'faithful performance of duty clause' providing such association or officer or employee thereof furnishes a bond containing such conditions and provisions as are required by the Federal Savings and Loan Insurance Corporation."

Section 5591 R. S. Missouri, 1929, being part of chapter 35, Laws of Missouri, 1931, page 147, which chapter repealed chapter 35, R. S. Missouri, 1929, reads partially as follows:

"The number, title and functions of the officers of any corporation created by virtue of this or any previous article, their terms of office, the time of their election, as well as the qualification of electors, and the time of each periodical meeting of the officers and shareholders of such corporation, shall be provided for in the by-laws. No person shall be eligible to become or shall continue a director unless he shall be the owner of at least five shares of capital stock of such corporation, and not delinquent in any manner thereon. All officers and employes of any building, loan and savings association doing business in this state, whether created under this article or any previous laws of this state, who have the custody or handling of any of the funds or securities of such association, or who sign or endorse checks of said association, shall give such security for the faithful performance of their duties as the by-laws may require, and no such officer shall be deemed qualified to enter upon the duties of his office until such security is approved by the board of directors and the supervisor of building and loan associations. All such bonds shall be filed with the supervisor of building and loan associations, or some depository designated by the supervisor of building and loan associations: Provided, that the supervisor of building and loan associations may require of any officer at any time such additional security, or such increase of said bond, or new bond, as he may, upon sufficient cause shown, deem necessary for the protection of the corporation and its members.

* * * * *

This section described the bond as conditional only "for the faithful performance of their duties as the by-laws may require". It also provided that the supervisor of building and loan associations may require at any time additional security, increase of said bond, or a new bond, as he deems necessary, for the corporation and its members.

The proviso to section 5591 in House Bill 166 passed by the Sixtieth General Assembly, and approved by the Governor, added the following provision:

" * * * shall give such security for the

faithful performance of their duties as the by-laws may require, and no such officer shall be deemed qualified to enter upon the duties of his office until such security is approved by the board of directors and the supervisor of building and loan associations; provided, however, that in lieu of security for the faithful performance of duties, the security or bond hereby required may contain such conditions and provisions as are required by the Federal Savings and Loan Insurance Corporation to be contained in securities or bonds furnished by all such officers and employees of an association insured by said Insurance Corporation; and further provided that any such security or bond shall provide that a cancellation thereof either by the surety or by the association shall not become effective unless and until ten days notice in writing shall have first been given to the supervisor and, - if the association to which such security or bond is given be insured thereby, - to the Federal Savings and Loan Insurance Corporation.

* * * * *

The wording in section 5591 House Bill 166 is very clear and not ambiguous or contradictory. In construing this section one must take into consideration the intention of the legislature in enacting the proviso. The original section 5591, Laws of Missouri, 1931, page 147, contained the phrase "for the faithful performance of their duties". The wording of the House Bill 166, section 5591 contains the same phrase and the proviso particularly states "in lieu of security for the faithful performance of duties", the security or bond hereby required may contain such conditions and provisions as are required by the Federal Savings and Loan Insurance Corporation * *" Clearly it was the intention of the legislature by the proviso to allow a different bond to be given than that set out in the main part of the section, as the bond contains certain conditions as set out and as required by the Federal Savings and Loan Insurance Corporation. In arriving at the construction of the statute and the intention of the legislature, one must read the original section in connection with the amending section to ascertain the purpose of the amending proviso.

In the case of Wallace v. Woods, 102 S. W. 2d 91, par. 9-11, the court said:

"The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, and "the manifest purpose of the statute, considered historically," is properly given consideration. * * * 2 Lewis, Sutherland on Stat. Const. (2d Ed.) sec. 363; Endlich on Interpretation of Statutes, sec. 329; and Maxwell on Statutes (5th Ed.) 425.' Cummins v. Kansas City Public Service Co., 334 Mo. 672, 66 S. W. (2d) 920, loc. cit. 925. We must determine the question involved upon the statute we now have rather than upon the original enactment. Words used must be read in the light of the amendments made, and might take a broader meaning as the application of the statute was broadened. We can best decide the present meaning of this section by considering the various steps taken to change it from what it was at first to what it is now."

In the case of O'Malley v. Continental Life Ins. Co., 75 S. W. 2d 837, par. 4-5, the court said:

"The legislative intent in the enactment of the law is to be sought and effectuated. This is the rule of first importance in statutory interpretation. To ascertain such intent we invoke as aids such of the auxiliary rules of interpretation as may seem to bear with incidence as direct as may be upon the matter in hand. Briefly stated, these in substance recognize and require that the language of the act be considered (25 R. C. L. sec. 216, p. 961); that each word be accorded its ordinary meaning, generally speaking; and that in construing a word or expression of a statute susceptible of two or more meanings the court will adopt that interpretation most in accord with the manifest purpose of the statute as gathered from the context (Id., sec. 237, p. 994)."

In the case of Smith v. Equitable Life Assurance Society, 107 S. W. 2d 191, par. 4, the court said:

"In determining the effect of an amendment of a statute the court must always proceed upon the basis that the Legislature intended to accomplish something by the amendment. Holt v. Rea, 330 Mo. 1237, 52 S. W. (2d) 877."

In view of the wording of the section as set out in House Bill 166, the purpose of the amendment and the above cited authorities, our opinion in answer to the first query of your request is as follows:

It is the opinion of this department that the provision added to section 5591 in House Bill 166, passed by the Sixtieth General Assembly, and approved by the Governor, when effective, eliminates the statutory necessity of any Missouri state-chartered building and loan association its officers or employees thereof furnishing a bond containing the "faithful performance of duty" clause, providing such association or officer, or employee, thereof, furnishes a bond containing such conditions and provisions as are required by the Federal Savings and Loan Insurance Corporation.

II.

The second query in your request reads as follows:

"Second, although the forms of blanket bonds being used by building and loan associations have been standardized so that such bonds, as furnished by various surety companies, contain the same provisions and coverage, no such standardization has been effected with regard to individual bonds. It can be seen, therefore, that this office, in the event your answer to question number one is in the affirmative, will receive individual bonds containing varied degrees of coverage. We may visualize surety companies effecting limitations of coverage and modification of terms in line with reductions in premium costs in an effort to secure new business. In an effort to forestall such a condition, which would result in an insufficiency of security, does the supervisor, with the assistance of your staff, have the right to prepare a

form of individual bond and require its use by all surety companies? If so, will it be necessary for the Bureau to have printed and made available for distribution to all surety companies the bond forms so prepared and required?

It will be noticed that part of section 5591 House Bill 166, contains the following phrase, at lines 18 to 21, inclusive:

"No such officer shall be deemed qualified to enter upon the duties of his office until such security is approved by the board of directors and the supervisor of building and loan associations."

Under this part of Section 5591 of House Bill 166, the supervisor of the building and loan association shall approve the bond and in accordance with this authority could formulate the proper bond to comply with chapter 35, as set out in House Bill 166.

Section 5591 at lines 37 to 42, inclusive, provides:

"Provided, that the supervisor of building and loan association may require of any officer at any time such additional security, or such increase of said bond, or a new bond, as he may, upon sufficient cause shown, deem necessary for the protection, of the corporation and its members."

Under that part of section 5591 the supervisor of building and loan associations may require of any officer at any time additional security, increase of a bond, or even may require a new bond, which he may deem necessary for the protection of the corporation and its members. Under the authority of this part of section 5591, the bond being under the supervision of the supervisor of building and loan associations, he may require any form that he sees fit to comply with chapter 35, which is now House Bill 166.

Therefore, it is the opinion of this department that the supervisor of building and loan associations has the

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right to prepare a form of individual bond and require its use by all surety companies, providing said bond complies with chapter 35, as set out in House Bill 166, and does not require additional conditions or provisions that are in conflict with chapter 35, now House Bill 166.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

WJB:RW