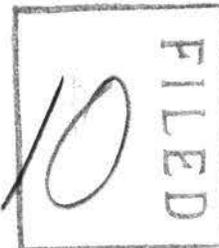


BONDS: SURETIES:

Where statute requires a surety bond to be given a department can not compel the giving of a corporation surety thereon.

February 7, 1935

Honorable J. C. Breshears
Commissioner
Jefferson City
Missouri



Dear Mr. Breshears:

Receipt of your letter dated February 1, 1935 is acknowledged. Your letter is as follows:

"This is a request for a prompt opinion on Section 12650, R. S. Missouri 1929, as to whether this Department has authority to require a corporation surety bond, and whether this Department has authority to reject any bond that does not seem adequate."

Section 12650 Revised Statutes Missouri 1929, in part, is as follows:

" Before any license shall be issued, the applicant therefor shall make and execute to the State of Missouri a surety bond in the penal sum of two thousand dollars * * * * * if at any time the commissioner be of the opinion that the responsibility of any surety or sureties on any existing bond is, or is in danger of becoming, impaired for any reason,

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he shall require the giving of a new bond with good and sufficient surety or sureties."

Plainly, the quoted portion of Section 12650 does not specifically require the giving of a corporation surety bond. The word 'surety' is defined in 50 C. J. page 13, section 2, as follows:

"In a broad sense, a 'surety' is one who becomes responsible for the debt, default, or miscarriage of another. But in a narrower sense a 'surety' is a person who binds himself for the payment of a sum of money, or for the performance of something else, for another who is already bound for the same, and in some jurisdictions there are statutory definitions to this effect. A 'surety' has also been defined as a person who, being liable to pay a debt or perform an obligation, is entitled, if it is enforced against him, to be indemnified by some other person, who ought himself to have made payment or performed before the surety was compelled to do so. "

In *Stifel Estate v. Cella* 220 Mo. App. 657, 664, the St. Louis Court of Appeals defined the qualities of a bond in the following language:

"This court has defined a bond as a written instrument containing a provision that a sum, affixed as a penalty, shall be binding upon the obligor and conditioned that the penalty may be avoided by the performance by the obligor of certain conditions."

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In Sandoval v. Madrid 294 Pac. 631, a case involving the recount of election ballots, and where the giving of a 'surety bond' for the payment of costs was required was under consideration, the contention of the litigant and the conclusion of the court is stated at page 632,

"The bond to secure payments of costs was executed by individuals as sureties. Respondent contends that it was insufficient, because the statute (section 41 - 619) requires a 'surety bond.' He contends that this expression means one executed by a corporate surety company organized for the purpose of acting as surety and authorized to do business in the state. So to interpret the statute would be to read into it something which the Legislature left out."

There is nothing in the definitions of a 'surety' and of a 'bond' as heretofore set out that would restrict the giving of a surety bond to a corporate entity, and the case of Sandoval v. Madrid, supra, is positive authority against such a construction. In addition to that, your attention is called to the fact that the bond required by Section 12650 may be signed by a surety or sureties, which rather implies that individuals, as well as a corporation surety, would be entitled to sign the required bond, it being a matter of common knowledge that unless more than one surety is required on a bond that the signing of a surety bond by a corporation surety is usually and ordinarily accepted and taken as sufficient.

CONCLUSION

We are of the opinion that Section 12650 Revised Statutes Missouri 1929, does not authorize your

Honorable J. C. Breshears

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department to require the bond given pursuant to that section to be signed by a corporation engaged in the business of a surety.

Yours very truly,

GILBERT LAMB
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC