

OFFICIAL BONDS: Attorneys at Law accepted as sureties on official bond does not invalidate, yet such should not be accepted as the statute is purely directory.

January 15, 1935.



Mr. Akey R. Smith  
Recorder of Deeds  
Clinton County  
Plattsburg, Missouri

Dear Sir:

This is to acknowledge your letter of January 8, 1935, as follows:

"Upon furnishing Official Bond for the discharge of his duties as Circuit Clerk of this County, John W. Porter gave as sureties R. H. Musser and Pross T. Cross, two attorneys at law, together with Earl S. Gibson, a merchant of this City. Under Section No. 2847 of Revised Statutes of Missouri, 1929, should this Bond have been approved? I might add that it was approved by Hon. R. B. Bridgeman, Judge of this 5th Judicial District, he contending that there was a decision of the Supreme Court modifying this Statute."

Section 2847, R. S. Mo. 1929, provides:

"No sheriff, collector, constable, county treasurer, attorney at law, clerk of any court of record, judge or justice of any court of record, shall be taken as surety in any official bond that may be given by any officer in this state."

The above statute has been held to be directory only and not mandatory by the Supreme Court of Missouri in State

ex rel. Howell County v. Findley, 101 Mo. 368, l. c. 372, as follows:

"The judges of the county court, it is true, ought not to have accepted one of their number as a surety on the official bond of the collector, as the statute forbids them from so doing, but statutes of this sort are regarded as directory merely, and as not designed to avoid the bonds where the statute has been disregarded."

The St. Louis Court of Appeals in Smith v. Young, 177 Mo. App. 482, l. c. 487, said the following:

"The first charge is that, as administrator of the father's estate, respondent failed to give a proper bond as required by the statute, in that the sureties thereon were attorneys at law. This point is purely technical and not well taken, since in any event the bond is not invalidated but remains in full force and effect."

It is our opinion that while the two attorneys should not have been accepted as sureties, yet, their acceptance as sureties does not invalidate the bond.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General.

JLH:EG