

SECURITIES ACT: Bond of dealer and salesmen.

October 13, 1937.

10-15



Honorable Russell Maloney,  
Commissioner of Securities,  
Jefferson City, Missouri.

Dear Sir:

This is to acknowledge receipt of your letter of October 5, 1937, in which you request the opinion of this department relative to the bond required by Section 7744, R. S. Mo. 1929. Your letter is as follows:

"Section 7744 Revised Statutes of Missouri 1929 requires that every applicant having a license to engage in the business as dealers in securities, file a bond, 'in the sum of five thousand dollars (\$5,000) running to the people of the state of Missouri in such form as the commissioner may designate, such bond to be conditioned upon the faithful compliance with the provisions of this act by said dealer and by all salesmen registered by him while acting for him. Such bond shall be executed as surety by a surety company having a net worth of not less than \$1,000,000 and authorized to do business in this state.'

"The same section further provides that every registration under this section shall expire on the 31st day of December in each year, but that a new registration for the succeeding year shall be granted upon application and payment of the fee, 'without filing of further statements or furnishing any further information, unless specifically required by the Commissioner.'

10/13/37

"In the past it has been the practice of this department to permit the dealers registration to be granted for such succeeding years and the bond approved wherein the bonding company filed with this department a continuation certificate of the bonding company of the preceding year. It was our opinion that the bonding company was liable in the sum of five thousand dollars (\$5,000) for each year. Upon this already being taken to court it was decided that the bonding company was liable only for \$5000 in the aggregate. Upon the statement of this department that we would require a new bond to be filed each year, there arose certain difficulties to that plan.

"We, therefore respectfully request an opinion from your office as to whether or not the department must require from dealers in securities a bond of \$5000 each year or whether the law contemplated only that the dealer post a \$5000 bond which would continue for the entire time of his license with this department."

According to your letter, the main question you desire to determine is whether or not, under Section 7744, R. S. Mo. 1929, you should require a new bond on each registration. In a recent case, Maryland Casualty Company, a corporation v. Camilla Driemeyer, et al., decided in the United States District Court for the Eastern Division of the Eastern Judicial District, Cause No. 11683 (quoting from memorandum of the Court), the Court said:

"The questions to be decided are, first, did the renewal certificates only continue in force the original bond or were they the assumption of a new liability, and second, is the plaintiff liable for interest on the amount of the bond from the date when the defalcations of the principal were discovered.

"The contract of the parties is clear. The plaintiff agreed, by express words in the continuation certificates, to be bound in the sum of \$5000. The court cannot change the obligations of the parties even though it may be true that the plaintiff company struck a hard bargain. It has been repeatedly held that a continuation certificate of this kind does not extend the surety's liability beyond the penalty specified in the bond. Grand Lodge U. B. of F., etc. v. Mass. B. & Ins. Co., 25 S. W. (2d) 783; State v. New Amsterdam Casualty Co., 236 Pac. 603; United States Fidelity & Guaranty Co. v. First National Bank, 233 Ill. 475, 84 N. E. 670."

In this case the court held that the continuation certificates each year on the bond did not create cumulative liability and did not create a new contract on each renewal, for the reason that each renewal certificate expressly provided that it was not cumulative and should not under any circumstances or in any event exceed the sum of \$5000. This continuation certificate was used by your office in 1936, and there is no question but that the extent of the liability of the surety company cannot, in any event, under your present procedure, be more than \$5000. In an opinion from this office dated August 26, 1933, your office was informed that the maximum amount that could be collected under the bond provided in the Act was \$5000. This opinion was given your office previous to the filing of the case of Maryland Casualty Company v. Camilla Driemeyer, et al.

The next question in point is whether or not a new bond is required after December 31st of each year, when the insurer or dealer desires to renew his registration, in accordance with Section 7744, R. S. Mo. 1929. This section provides that after the commissioner has received and filed an application in writing from the dealer or salesman of certain securities, he shall require a bond of \$5000 running to the people of the State of Missouri in such form as the commissioner may designate, such bond to be conditioned upon the faithful compliance with the provisions of this act by said dealer and by all salesmen registered by him while acting for him.

As you notice, nothing is said any place in the section or Act concerning anything about the renewal of the same bond. The section does set out how the registration may be renewed, but does not mention the bond in connection with renewal. It says: "Applications for renewals must be made not less than thirty (30) nor more than sixty (60) days before the first day of the ensuing year, otherwise they shall be treated as original applications." In the renewal the section specifically says, "without filing of further statements or furnishing any further information, unless specifically required by the commissioner." There is nothing said in this connection about the bond.

The same section provides that, "every registration under this section shall expire on the 31st day of December in each year," but provides for renewal. The question now is, did the bond on the 31st day of December expire or was it renewable, and what was the intention of the Legislature in setting the expiration date of the registration.

In 59 C. J., page 952, it is said:

"The intention of the legislature is to be obtained primarily from the language used in the statute. The court must impartially and without bias review the written words of the act, being aided in their interpretation by the canons of construction. Where the language of a statute is plain and unambiguous, there is no occasion for construction, even though other meanings could be found; and the court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning," citing *Gendron v. Dwight Chapin & Co.*, (App.) 37 S. W. (2d) 486; *Betz v. Kansas City So. R. Co.*, 284 S. W. 455, 314 Mo. 390; *Grier v. Kansas City, C. C. & St. J. Ry. Co.*, 228 S. W. 454, 286 Mo. 523.

In *Betz v. Columbia Telephone Co.*, (App.) 24 S. W. (2d) 224, the Court said:

"To get at the true meaning of the language of the statute the court must look at the whole purpose of the act, the law as it was before the enactment, and the change in the law intended to be made."

The purpose of the whole Securities Act was to protect the people of the State of Missouri from any fraudulent or illegal practices or transactions. The \$5000 bond was required to reimburse the people of the State of Missouri for any fraudulent or illegal practices or transactions. If the \$5000 bond was not cumulative at each renewal, the bond in a number of years would not be sufficient to cover any fraudulent or illegal practice of the dealer or salesman. This situation occurred in the case of *Maryland Casualty Company v. Camilla Driemeyer, et al.*, cited above.

59 C. J., at page 961, sets out the following:

"In construing a statute to give effect to the intent or purpose of the legislature, the object of the statute must be kept in mind, and such construction placed upon it as will, if possible, effect its purpose, and render it valid, even though it be somewhat indefinite. To this end it should be given a reasonable or liberal construction; and if susceptible of more than one construction, it must be given that which will best effect its purpose rather than one which would defeat it, even though such construction is not within the strict literal interpretation of the statute, and even though both are equally reasonable. Where there is no valid reason for one of two constructions, the one for which there is no reason should not be adopted. The legislature cannot be held to have intended something beyond its authority in order to qualify the language it has used," citing *Betz v. Columbia Telephone Co.*, (App.) 24 S. W. (2d) 224.

In the case of New Amsterdam Casualty Co. v. Hyde, (Ore., 1934) 34 Pac. (2d) 930, and 35 Pac. (2d) 980, the Court held such a bond as a continuing bond, and not a separate bond for each period of registration which ended each year. In that case the Blue Sky Commissioner had not requested a new bond, but allowed them to renew, as your office is now doing.

Under the Securities Law of the State of Missouri, Section 7724a provides:

"Said commissioner, under the direction of the secretary of state, is hereby authorized to make all needful rules and regulations, and from time to time to amend and supplement the same, to carry this chapter into full force and effect."

In conclusion, we will say that in view of the purpose of the Securities Act and the intention of the Legislature, this office is of the opinion that the Commissioner may require a new bond for each renewal, under Section 7744 of the Securities Act.

Respectfully submitted,

W. J. BURKE,  
Assistant Attorney General.

APPROVED:

---

J. E. TAYLOR,  
(Acting) Attorney General.

WJB:HR