

SCHOOLS:
STATE BOARD OF EDUCATION:
BOND:

Bond given by the State Superintendent
of Schools does not cover custodian
of securities held by the President
of the State Board of Education.

March 6, 1942

Honorable Lloyd W. King
State Superintendent of Schools
Jefferson City, Missouri

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Dear Sir:

This is to acknowledge receipt of your letter of recent date, wherein you request an opinion from this Department. Your letter of request is as follows:

"In accordance with Section 10,598, Revised Statutes Missouri, 1939, I as State Superintendent of Public Schools have given bond.

"In accordance with Section 10,663, Revised Statutes Missouri, 1939, I as State Superintendent of Public Schools am president of the State Board of Education.

"According to an opinion from your office on January 21, 1942, the custody of certain United States Savings Bonds, Defense Series "G", purchased by the State Board of Education for the account of the State Seminary Fund is to be retained by the State Board of Education. Therefore, the State Board of Education has requested me to seek the advice of the Attorney General as to whether the bond given by the State Superintendent of Schools, as such, would cover matters handled by the State Superintendent of Schools as President of the State Board of Education."

The question is: Does the official bond given by the Superintendent of Schools as required by Section 10598, R. S. Mo. 1939, cover the United States Savings Bonds, Defense Series "G", purchased by the State Board of Education for the account of the "Seminary Fund," and in your custody as President of the State Board of Education?

The State Superintendent of Schools under Section 10598, supra, is required to give an official bond in the amount of \$10,000 to the State of Missouri. Section 10598, supra, reads as follows:

"Before entering upon the discharge of his official duties, the said superintendent shall give bond in the penal sum of ten thousand dollars to the state of Missouri, with two or more sureties, to the acceptance of the secretary of state, conditioned that he will truly account for and apply all moneys or other property which may come into his hands, in his official capacity, for the use and benefit of public schools, and that he will faithfully perform the duties enjoined upon him by law; and he shall take and subscribe the oath or affirmation required by the Constitution of the state, and diligently and faithfully discharge the duties of his office as prescribed by law; which bond, with certificate indorsed thereon, shall be filed with the secretary of state."

Under the provisions of Section 10663, R. S. Mo. 1939, the State Superintendent of Schools is President of the State Board of Education and the Governor, Secretary of State and Attorney General are ex officio members of said board. We have searched the statutes and have been unable to find any statute which makes it the duty of the President of the State

Board of Education to be custodian of the bonds in question. The bond given by the State Superintendent of Schools is a statutory bond and its terms cannot be enlarged by implication and does not cover matters that are beyond the scope of his official duties.

In the early case of City of St. Louis v. Sickles, 52 Mo. 122, l. c. 126, the court said:

"The contract of the sureties is only for the faithful performance of those trusts that properly and legally belong to his office. (Blair vs. Perpetual Ins. Co., 10 Mo., 560.) The sureties of a public officer whose duties are defined by law, are only responsible for the faithful performance of the duties assigned to him by law and cannot be made liable for malversation in the conduct of affairs which do not pertain to his office, and if the officer engage or those who by law have the control of his official conduct employ him in matters foreign to his office, the sureties will not be bound for his acts while so employed; and any losses which may happen in the transaction or management of such business cannot be visited upon those who have guaranteed the official conduct of the officer. (Nolley vs. Callaway Co., 11 Mo., 447.) * * * * *

And, also in the case of The Home Savings Bank v. Traube, 75 Mo. 199, l. c. 202, the court said, in quoting from the case of State v. Sandusky, 46 Mo. 381, the following:

"* * * 'The liability of a surety is not to be extended by implication beyond the terms of his contract. To the extent and in the manner and under the circumstances pointed out in his obligation, he is bound, and no further.' The same rule is asserted in other cases. Blair v. Perpetual Ins. Co.

10 Mo. 560; Nolley v. Callaway
Co., 11 Mo. 463; State v. Boon, 44
Mo. 262; Orrick v. Vahey, 49 Mo.
431; City of St. Louis v. Sickles,
52 Mo. 122."

And, also, in the case of State ex rel. Hamilton v. May,
177 Mo. App. 717, at l. c. 722, it is said:

"It is an action in the name of the
State, as required by statute, and
is at the relation of the father
and mother and to their use. It is
on the bond and to determine the
liability of the principal and sure-
ties on the bond, we must look to
the condition of the bond, for the
bond is the contract into which the
makers entered. The obligation is to
be found in the bond itself, and as
there expressed, the bond to be fairly
construed and not to be extended by
implication. The liability of sureties
is said to be strictissimi juris. These
rules are elementary, but see City of
St. Louis v. Sickles, 52 Mo. 122, l. c.
127; State ex rel. Chase v. Davis, 88
Mo. 585; 35 Cyc., par. C, p. 1900; 25
Am. & Eng. Ency. of Law (2 Ed.), par.
IX, p. 723. * * * * *

The rule is also stated briefly in 46 C. J. p. 1068, Sec.
399, as follows:

"Liability upon an official bond arises
as a rule only with reference to acts
of the officer which pertain to some
function or duty which the law imposes
upon his office."

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If the statutes had contemplated that the Superintendent of Schools, either as Superintendent or in his capacity as President of the State Board of Education, should be the custodian of the bonds and other securities in the Seminary Fund it would seem that the Legislature would have made special provision therefor and would have required a much larger official bond than the \$10,000 required by Section 10598, supra.

CONCLUSION.

It is, therefore, our opinion that the official bond given by the State Superintendent of Schools does not cover his acts in connection with the custodianship of bonds and securities held and in his possession as President of the State Board of Education and his sureties would not be liable for wrongful acts in connection therewith.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

CRH:CP