

BONDS: Disapproved for failure to comply with language of the statute.

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August 10, 1944



Hon. Gregory C. Stockard  
Secretary of State  
Jefferson City, Missouri

Dear Mr. Stockard:

We are in receipt of your recent letter enclosing a photostatic copy of the bond submitted by the Graham Paper Company and asking that we examine same to see whether or not it conforms with all requirements.

Section 14999 R. S. Mo., 1939 prescribes the type of bond that bidders must submit with their proposals to furnish paper to the State. A careful reading of the bond shows that the language of the statute has not been followed.

In the recent case of State vs. Sheible, 163 S. W. (2d), 559 1. c. 560, the Supreme Court of Missouri stated its oft repeated rule of construction of statutory bonds:

"Furthermore, the rule is established in this State 'where a bond is given in pursuance of a statute, courts will, in enforcing the bond, read into it the terms of the statute which have been omitted, and will likewise read out of it terms included in it that are not authorized by the statute.' State v. Wipke, 345 Mo. 283, 133 S. W. 2d 354, 357; State v. Vienup, 347 Mo. 382, 147 S. W. 2d 627."

While it is true that the rule above announced might cure any defect in the bond as furnished by the Graham Paper Company, yet we feel it is a better and safer practice to require that the bond be furnished the State in the language of the statute.

For this reason, we disapprove the bond, and in doing so, we are merely passing on same as to form.

Hon. Gregory C. Stockard

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We are not passing on the question as to whether the bond conforms to the other requirements of the statute since in doing so, it would require that we pass on such questions as to whether the sureties are good and sufficient which we are not in a position to determine.

Respectfully submitted,

MAX WASSERMAN  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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