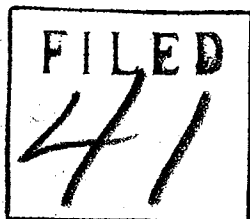


PROBATE COURT: Securities on an administrator's bond are
ADMINISTRATORS: required to be residents of the county in
BONDS: which the court granting letters of admin-
istration is situate.



May 18, 1955

Honorable Robert Hoelscher
Prosecuting Attorney
Warren County
Warrenton, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office, which request reads as follows:

"Section 461.260 RSMo, 1949, provided in the past that; 'The Court, or judge or clerk in vacation, shall take a bond of the persons to whom letters of administration are granted, with two or more sufficient securities resident in the County'.

"May we have your opinion as to the proper interpretation of the phrase 'resident in the County'? Does this require the securities to be residents of the County in which the Court is located, or may they be residents of the County of which the administrator is a resident?"

Section 461.260, RSMo 1949, to which you refer, provides as follows:

"The court, or judge or clerk in vacation, shall take a bond of the persons to whom letters of administration are granted, with two or more sufficient securities, resident in the county, to the state of Missouri, in such amount as the court or judge or clerk shall deem sufficient, not less than double the amount of the personal estate."

Honorable Robert Hoelscher:

You inquire whether the term "resident in the county," as contained in the above section and relating to securities on a bond required to be given by persons to whom letters of administration are granted, means that the securities are to be residents of the county in which letters are granted, or whether such securities are required to be residents of the county of which the administrator is a resident.

Who may or may not be sureties is a matter of statutory regulation (23 C.J., Executors and Administrators, Sec. 201, p. 1074). Section 461.260 was first enacted in substantially the same form in the year 1807, 1 Ter. Laws, p. 126, Sec. 3. Taking into consideration the time when this requirement was imposed, the circumstances then existing, particularly in regard to travel and communication, the context of Section 461.260 and related statutory provisions, we are of the opinion that the securities referred to must be residents of the county in which letters are granted. In the case of *Barksdale v. Cobb*, 16 Ga. 13, decided in 1854, a suit was brought to compel the court to accept securities who were residents of an adjoining county. There was no statutory requirement that securities be residents of the county. While mandamus was refused for other reasons, the Supreme Court of Georgia said:

"We would not be understood as holding, that in every instance, and under all circumstances, the Ordinary should be compelled to accept securities residing out of the county, provided they were solvent. Their residence might be so remote as to justify him in withholding letters. For we are not unmindful of the necessity and importance of enabling that officer, as well as the heirs, of maintaining a proper supervision and control over the circumstances and condition of the parties."

Honorable Robert Hoelscher:

We further wish to call your attention to Section 461.360, relating to the duties of the probate court. Said section provides, in part, as follows:

"* * * and it shall be the duty of the judge annually to examine all bonds of executors and administrators, guardians and curators, on file in his said office, and if, upon examination thereof, he shall have good reason to believe that any security has become a nonresident of the state or county, or has died or become insolvent, the judge thereupon shall make an order that said executor or administrator give another bond to the satisfaction of said judge or court, and upon failure to give such bond within ten days after such order shall be made, the judge may make an order revoking his or her letters and their authority from that time shall cease. (R.S. 1939, Sec. 22, A. 1949 S.B. 1132)."

Both this section and Section 461.260 relate and refer specifically to the duty and authority of the probate court or judge or clerk thereof, rather than to the duties and obligations of the administrator, and therefore we must conclude that the term "resident in the county," as used, imposes the requirement that securities be residents of the county wherein letters are issued.

CONCLUSION

Therefore, it is the opinion of this office that securities on an administrator's bond are required to be residents of the county in which the court granting letters of administration is situate.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Yours very truly,

DDG:vtl:irk

JOHN M. DALTON
Attorney General