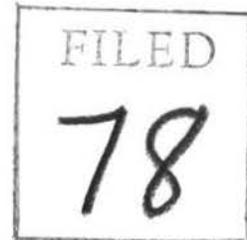


JUN 17 1968

OPINION NO. ~~388~~⁷⁸
Answered by Letter
(Deann Duff)
388-1967

Honorable Lem T. Jones, Jr.
State Senator - 10th District
Missouri Senate
700 Waltower Building
Kansas City, Missouri 64106



Dear Senator Jones:

This letter is in response to your question: "May a trust company, which has complied with all applicable provisions of Section 363.700, RSMo 1949, as amended, serve as a plaintiff in a replevin action in the courts of record of this State without providing the sheriff with the bond described in Rule 99.03 of Missouri Rules of Civil Procedure, effective April 1, 1960?"

Section 363.700, RSMo 1959, provides that a trust company, with a certificate, which is issued by the State Finance Commissioner after the company deposits two hundred thousand dollars with him, shall be permitted to qualify as a fiduciary without giving bond and become sole guarantor or surety in or upon any bond required by law.

Honorable Lem T. Jones, Jr.

"Any company now doing business in this state or which may hereafter be organized under the provisions of this chapter to do business in this state, which shall make with the finance commissioner a deposit of two hundred thousand dollars, consisting of cash, or United States, state, county, municipal or other bond, or bonds, notes, or debentures secured by first mortgages or deeds of trust on unencumbered real estate in the state of Missouri, worth at least double the amount loaned thereon, or such other first-class securities as the said commissioner may approve, said bonds or securities not to be received or held at a rate above par, but if their market value is less than par, they shall not be held above their actual market value, and which shall satisfy said commissioner of its solvency, and shall have received the certificate of said commissioner that such company has made said deposit and has satisfied him of its solvency, it being hereby made the duty of said commissioner to issue such certificate in accordance with the facts, shall be permitted to qualify as guardian, curator, executor, administrator, assignee, receiver, trustee, or in any other fiduciary capacity, by appointment of any court, or under will, or depositary of money in court, without giving bond as such, and become sole guarantor or surety in or upon any bond required by law to be given in any proceeding in law or equity in any of the courts of this state or other states or of the United States, any other statute to the contrary notwithstanding; and whenever such company shall exhibit to the court, judge, clerk or other officer, making such appointment, or whose duty it is to approve such bond, the certificate of the finance commissioner of the state of Missouri that such company has complied with the provisions of this section with respect to said deposit and proof of solvency, the court, or officer making such appointment, or whose duty it is to approve such bond, may appoint such company to such office or trust, and permit it to qualify as such without giving any bond, and permit such company to become sole guarantor or surety upon any such bond, without requiring any other surety therefor . . ."

Section 363.700, RSMo 1959.

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Two different types of legal proceedings are covered by this statute. When a trust company acts as guardian, curator, executor, administrator, assignee, receiver, trustee, or in any other fiduciary capacity, it shall be permitted to qualify without giving bond as such. However, only when the trust company is acting in a fiduciary capacity can it avoid giving bond.

In other cases, a trust company may become sole guarantor or surety in or upon any bond required by law or equity. This provision of the statute is applicable when a bond must be given and does not purport to authorize a trust company to proceed without executing a bond. We believe that the statute makes clear that though the trust company may act as sole guarantor or surety upon the bond of a principal, the provisions authorizing the corporation to become sole guarantor or surety upon a bond do not apply when the bond is one that must be given by the trust company, in which case the corporation itself is the principal. In the replevin action in question, the trust company must execute the bond and the trust company is the principal and cannot act as the guarantor of its own bond.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

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