

BONDS:

Penal Commissioners personally liable on bond to State Treasurer.

April 21, 1944



5-23

Mr. K. Autenrieth
Auditor
Department of Penal Institutions
Jefferson City, Missouri

Dear Mr. Autenrieth:

We have your request for an official opinion of March 8, 1944, which is as follows:

"On January 12th you rendered an opinion concerning the State Treasurer issuing a duplicate check to the Parker Boot & Shoe Mfg. Company, \$246.00.

"The question now arises as to whether or not the Commissioner signing the Bond is personally liable, or, is it the responsibility of the Department of Penal Institutions?

"Thanking you for giving this your attention, beg to remain"

The law has long been settled in this State, that a public officer or commission has no authority beyond that which is granted and authorized by statutes. A careful search of the statutes fails to disclose any authority for the Board of Penal Commissioners, as a board, to obligate the State upon a bond, such as is mentioned in the opinion request. Moreover, the bond necessarily would have to be for an indefinite period. Assuming that the Board did not have authority to bind the State it follows that it would not have the power to bind the successors.

In the case of State vs. Weatherby, 129 S.W. 2d 887, 344 Mo., 848, the Court said,

"* * * Public officials act in regard to public funds in a trust capacity. Their acts beyond the scope of their authority are, and are known to be, unauthorized, do not bind their principal, and their mistakes are their own and not the mistakes of the sovereign. * * *"

The Missouri Supreme Court in the very early cases of McClenticks vs. Bryant et al., 1 Mo., 598, laid down the rule which has never yet been changed. We quote,

"* * * The whole question then is thrown back on the nature of this instrument of writing sued on, whether it was lawfully given by public agents acting in pursuance of their authority. Public agents may bind themselves, if they think fit to do so, and do it by using apt words to that effect. They may bind themselves, if they make a contract beyond their authority. This court is unanimous on the point, that the defendants are liable, and on this plain ground, that the Commissioners had no power, as Commissioners, to bind the county, and that the county is not, nor can be by the Commissioners, bound to pay said debt. * * *"

C O N C L U S I O N

It is therefore, the opinion of this office, that if the Board of Penal Commissioners execute a bond to the State Treasurer of the State of Missouri, as outlined in the request, the members of the Board will be personally liable upon the bond, and further, that the said Board has no authority to bind the State in such a manner.

Respectfully submitted,

GAYLORD WILKINS
Assistant Attorney General

GW:DC

APPROVED:

ROY MCKITTRICK
Attorney General