BONDS:)
SECRETARY OF STATE:) Form of Dealer's Bond; approved.
BLUE SKY LAW:)

April 29, 1936.

4-30

FILED
12

Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri

Dear Mr. Brown:

This is to acknowledge receipt of your letter of April 15, 1936, in which you request the opinion of this Department relative to form of bond required by Section 7744, R. S. Mo. 1929. Your letter is as follows:

> "About two years ago, you advised me with reference to the aggregate clause in surety bonds required of dealers in securities, by the provisions of Sec. 7744 R. S. 1929.
>
> "The underwriters are again insisting upon a change in the bond. They state that the wording 'and shall properly account for all moneys or securities received from or belonging to another' be eliminated. They claim that Sec. 7744 specifies the condition of the bond, and that Judge Stockard was not justified in inserting the above wording in the bond form.
>
> "Unless this wording is eliminated, the underwriters will refuse to renew about three fourths of the existing blue sky bonds at the end of the current year. They claim that the present wording virtually causes the surety company to make an investment of $5,000 in the business of the principal.

> "The underwriters also want to insert a 60-days cancellation clause, to which I see no objection.
>
> "A copy of our standard form of bond is attached, bearing the corrections which have been requested. Will you please advise whether you approve the form as corrected, and favor me with any comment or suggestions you may care to offer?"

With your letter of request you have enclosed a printed form of dealer's bond in which certain portions thereof have been stricken out and typewritten additions made thereto. Your question, therefore, is whether or not the printed bond, Form J12, submitted to us, known as Dealer's Bond, as corrected and interlined complies with the bond required by Section 7744, R. S. Mo. 1929. Said section, as to the condition of the bond, provides, "* * * such bond to be conditioned upon the faithful compliance with the provisions of this chapter by said dealer and by all salesmen registered by him while acting for him." The condition of the bond is fixed by the Legislature and is a statutory bond, and, therefore, any other condition than that required by the statute would be unnecessary and surplusage.

In 9 Corpus Juris, page 26, it is said:

> "Where a bond contains the conditions prescribed by statute, and also contains conditions in excess of those so required, if the excess can be separated from the authorized portion without destroying the latter it may be rejected as surplusage and the rest of the bond held valid, in the absence of a statutory provision expressly or by implication making it void, unless the language of the bond precludes a construction giving it validity."

In Fogarty v. Davis, 264 S. W. 878, l. c. 880, the court said:

> "The rule in this state is that, in construing a statutory bond, the provisions of the

> statutes must be read into it and construed as a part of it. 'When parties execute a statutory bond they are chargeable with notice of all provisions of the statute relating to their obligation, and those provisions are to be read into the bond as its terms and conditions. * * * These provisions are a part of the bond of which both principal and surety must take notice.' State ex rel. v. Rubber Mfg. Co., 149 Mo. loc. cit. 212, 50 S. W. 330."

And further, it is stated in the case of Home Indemnity Co., v. State of Missouri, 78 F. (2d) 391, l. c. 393, as follows:

> "The scope of the surety's obligation under such a statutory bond is prescribed by the statute in compliance with which it is given and by the language employed in the bond defining it. Zellars v. National Surety Co., 210 Mo. 86, 108 S. W. 548; Fogarty v. Davis, 305 Mo. 288, 264 S. W. 879."

It is our opinion that a bond in the language of the statute would be sufficient and meet all of the requirements of the law, and that portion, namely, "and shall properly account for all moneys or securities received from or belonging to another" may be stricken from the printed form of the bond submitted.

Limits of Liability.

The bond contains this provision:

> "The limit of liability of the principal and surety herein shall not in any event nor in any circumstance exceed in the aggregate the sum of Five Thousand ($5000.00) Dollars.";

and is not ambiguous and expressly limits the penal sum of the bond to $5000.00, and the typewritten clause, namely, "and that the aggregate liability under this bond and all the renewals thereof shall at all times be limited to the penal sum above stated, and that liability shall not be cumulative.", is unnecessary and does not add anything to the bond.

We can see no serious objection to that part of the typewritten portion of the bond, relative to the concellation clause, as follows:

> "This bond is subject to the further condition that the surety may terminate its liability thereunder, as to all transactions subject to such termination, by written notice of cancellation to the Commissioner of Securities of the State of Missouri, such termination to be effective on a date not less than sixty (60) days from the receipt of such notice by the Commissioner of Securities."

A bond written in accordance with the above suggestions will be approved as to form by this Department.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General

CHH:EG