PURCHASING DEPARTMENT:
BONDS:

Bond required by certifying officer must clearly show the intention to cover duties prescribed by House Bill No. 500, 62nd General Assembly.

November 20, 1943

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Honorable Forrest C. Donnell
Governor of Missouri
Jefferson City, Missouri

Dear Governor Donnell:

Under date of November 16, 1943, you wrote this office requesting an opinion, as follows:

> "Section 14592 (House Bill No. 500 of the Sixty-Second General Assembly) reads as follows:
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> > 'No department shall make any purchase except through the purchasing agent as in this chapter provided. The purchasing agent shall not furnish any supplies to any department without first securing a certification from an official of the department, designated by the department to act in its behalf, and who shall furnish bond in an amount deemed sufficient by the Governor to protect the state against any loss, that an unencumbered balance remains in the appropriation and in the allotment to which the same is to be charged, sufficient to pay therefor. The purchasing agent shall be liable personally and on his bond for the amount of any purchase made by him without such certification and the departmental official shall be liable personally and on his bond for the amount of any false certification.'

> "Your opinion, as soon as possible, is respectfully requested on the following question:
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> > Will a faithful performance bond suffice as the bond of the official of the department, designated by the department to act in its behalf, under the provisions of House Bill No. 500, or is it required that the official of the department designated by the department to act in its behalf furnish a new bond conditioned on there remaining an unencumbered balance in the appropriation and in the allotment to which the same is to be charged, sufficient to pay therefor?"

Section 14592, R. S. Missouri, 1939, before its amendment by House Bill No. 500, enacted by the 62nd General Assembly, provided that no purchase should be made without a certificate from the state auditor that there remained an unencumbered balance in the appropriation and in the allotment to which the purchase was to be charged, sufficient to pay therefor.

By way of introduction to a discussion of your question, it is desired to call attention to some elementary principles of law applicable to bonds.

In 11 C. J. S., page 398, is found the following definition of "bond":

> "A bond is an obligation in writing, usually under seal, binding the obligor to pay a sum of money to the obligee, sometimes with a clause to the effect that on performance of a certain condition the obligation shall be void."

And on page 417 is found the following rule concerning the construction of bonds:

> "A bond, like other contracts, should be construed according to the fair import of the language used therein."

As a bond is a contract, the terms of the bond would to some extent govern the matters covered by the bond, and if the bond was given to comply with a statute, the statute under which the bond was given would also have to be considered. The question asked in your letter is very broad and the answer given will necessarily have to be equally as broad. Because the language of the bond and any statute under which the bond may be given would have to be considered, there may be some exceptions to the conclusion expressed herein.

In the recent case of State ex rel. Jefferson County v. Sheible, 163 S. W. (2d) 559, l. c. 560, is found the following extract concerning construction of bonds:

> "The general rule requires that a bond should be construed to carry into operation the reasonable intention of the parties, and such construction should be given when it can be fairly done, to support rather than defeat the bond. 11 C.J.S., Bonds, sec. 40. 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.
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> "We had a case involving similar doctrines before us in Fogarty v. Davis, 305 Mo. 288, 264 S. W. 879, 880. In that case the court found that through inadvertence the wrong printed form of bond was used. However, it held that the statutory provisions intended

> must be read into the bond given, stating: '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. (Manhattan) Rubber Mfg. Co., 149 Mo. (181), loc. cit. 212, 50 S. W. (321), 330. " * * * This does not strike down the hornbook propositions that the obligation of the surety should not be stretched or swollen by mere implication, and that sureties are favorites of the law and are entitled (subject to some qualifications) to stand on the terms of the bond, construed strictissimi juris. It merely puts the matter on a common sense footing as between man and man by reading the written law into the bond, discerning the objects to be subserved by the bond, and getting at the true intent and meaning of the bond by applying its terms to the objects sought. The general language of the bond must be interpreted in the light of these considerations." Henry County v. Salmon, 201 Mo. (136), loc. cit. 162, 163, 100 S. W. (20, 27. "All statutory bonds are to be construed as though the law requiring and regulating them was written in them. * * *" Zellars v. (National) Surety Co., 210 Mo. (86), loc. cit. 92, 108 S. W. (548), 549.' See Camdenton Consol. School Dist. v. New York Cas. Co., 340 Mo. 1070, 104 S. W. 2d 319."

In the early case of State ex rel. Moore v. Sandusky, 46 Mo. 377, l. c. 381, is the following:

> "No principle is better settled than that the liability of a surety is not to be extended by implication beyond the terms of his contract. To the extent and in the manner and under the circumstances pointed out in his obligation, he is bound, and no further."

Following this case, in the case of The Home Savings Bank v. Traube, 75 Mo. 199, l. c. 202, we find the court again stating the same principle:

> " * * * The general rule in regard to the liability of sureties, is well settled and has been repeatedly announced by this court. In the State v. Sandusky, 46 Mo. 381, it was said: 'The liability of a surety is not to be extended by implication beyond the terms of his contract. To the extent and in the manner and under the circumstances pointed out in his obligation, he is bound, and no further.' The same rule is asserted in other cases. Blair v. Perpetual Ins. Co., 10 Mo. 560; Nolley v. Callaway Co., 11 Mo. 463; State v. Boon, 44 Mo. 262; Orrick v. Vahey, 49 Mo. 431; City of St. Louis v. Sickles, 52 Mo. 122."

In this case the principal had given bond for the faithful performance of his duties as a bookkeeper in a bank, and at times he performed services as teller in the bank. The court held his bondsmen liable on the bond for the wrongful acts committed as bookkeeper but not liable for the wrongful acts committed while acting as teller.

In another early case, State to the use of Carroll County v. Roberts, 68 Mo. 234, l. c. 236, we find another statement of the principle regarding the construction of bonds:

> "The State cannot, by a legislative act, materially modify a contract between herself and a citizen, any more than she can

> impair the obligations of a contract between citizens. The Legislature cannot increase or vary the obligations of a citizen in a contract entered into by him with the State, and the effect of such legislation as we are considering, if it does not release the security, is to extend his liability on the bond for a longer period of time than he agreed to be bound, and to increase the risk he has taken beyond that which he assumed when he executed the bond. By the law, when the obligation was entered into, the collector was required to settle with the county court on the 3rd Monday in December. By the act of 1870, that settlement was postponed to the 3rd Monday in January. No officer in the State, nor any judicial tribunal could, after the act of 1870, demand of the collector a settlement before the 3rd Monday in January, or the payment of the balance of moneys then in his hands within thirty days after such settlement; and to hold the securities liable, under these circumstances, would be to declare that the State, by an act of the Legislature, may extend the time for which the securities have agreed to be bound for the principal, and by thus modifying the contract, hold them liable for risks which they did not agree to take. The State has no more right or authority to change a contract betwixt her and an individual, than she has to compel the individual to make such a contract in the first instance."

This was a suit on a collector's bond and the law respecting the time for making settlement had been changed and more time allowed the collector for making settlement.

In a suit on an appeal bond, in the case of Schuster v. Weiss, 114 Mo. 158, l. c. 169, the court used the following language:

"And while the authorities all agree that the creditor and principal cannot vary or enlarge the liability of the surety, it is equally well settled that the state or government cannot change the responsibility of the surety on official bonds to the state by changing or enlarging the contract of the principal, by act of the legislature. Accordingly it was ruled in State to use v. Roberts, 68 Mo. 234 that a change in the law by which the time for the annual settlement of county collectors is fixed a month later than that provided in the law when the bonds of the collectors were given, operated to discharge the sureties. And in Bartlett v. Attorney General, Parker, 278, and Bowdage v. Attorney General, Parker, 278, and Bowdage v. Attorney General, Parker, cited and approved by Metcalf, Judge, in Grocer's Bank v. Kingman, 16 Gray, 473, it was held that a bond given as security for a collector of customs was held not to extend to a new duty laid on certain articles after the bond was given. See also Bonar v. McDonald, 3 H. L. Cas. 226; Pybus v. Gibb, 88 English Common Law Reports, 902. These cases sufficiently indicate the law of the adjudicated cases."

CONCLUSION

From the foregoing, it is the opinion of the writer that any bond given to comply with the provisions of Section 14592, R. S. Missouri, 1939, as amended by House Bill No. 500, enacted by the 62nd General Assembly, Laws of 1943, page 1004, should clearly and unequivocally show by its terms that it is given for the purpose of complying with that law. In the event of the designation of some person not heretofore under bond for the performance of the duties prescribed by House Bill No. 500, enacted by the 62nd General Assembly, a bond conditioned for the faithful performance of the duties of certifying officer under the provisions of Section 14592,

as amended by House Bill No. 500, would be sufficient. However, for an officer who is already required to give a bond for the performance of his duties, a new bond should be required which would clearly show the intention of the parties that it should cover the performance of the new duties.

Respectfully submitted

W. O. JACKSON
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APPROVED:

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