BONDS: Deputy constable forbidden to sign official bond as surety.

11-18

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Hon. J. R. Roberts,
Justice of the Peace,
307½ College Street,
Springfield, Missouri.

Dear Sir:

This department wishes to acknowledge your request for an opinion, wherein you state as follows:

> "I am asking you to interpret for me Sec. 2847, Rev. Statutes, relative to who may or may not sign a constable's bond.
>
> "The custom hereto in my jurisdiction is for the constable to have his deputies for bondsmen. I have consulted several good law firms, but they differ widely. I have taken the position that, since a deputy constable can do whatever his principal can do in way of legal process service, he should not do what the principal is forbidden to do in the matter of signing bonds of any kind.
>
> "As a result of such practice it is clear that the constable is placed under obligations to his bondsmen, and is therefore apt to unduly indulge them."

Section 2847, R. S. Mo. 1929, declares what parties shall be taken as surety, thus:

> "No sheriff, collector, constable, county treasurer, attorney at law, clerk of any court of record, judge or justice of any court of record, shall be taken as surety in any official bond that may be given by any officer in this state."

The above section specifically forbids the naming of a constable as surety in any official bond that may be given by any officer in this state. The question presented is whether the prohibition, although not specifically mentioned, includes a deputy constable.

In the case of State v. Missouri Workmen's Compensation Commission, 40 S. W. (2d) 503, l. c. 504, 225 Mo. App. 501, the court lays down the following fundamental rule of statutory construction:

> "The fundamental rule in the construction of the statutes is to ascertain and give effect to the purposes of the Legislature (Consolidated School Dists. v. Hackmann, 302 Mo. 558, 258 S. W. 1011), and a statute must be liberally construed in the light of its underlying reasons, keeping in mind the furtherance of the purpose sought thereby (St. Louis & S. F. R. Co. v. Public Serv. Comm. of State of Missouri, 254 U. S. 535, 41 S. Ct. 192, 65 L. Ed. 389)."

And in the case of Kling v. Kansas City, 61 S. W. (2d) 411, l. c. 413, 227 Mo. App. 1248, the court said:

> "It is not only the duty of courts in interpreting statutes to ascertain, if possible, from all available sources the legislative intent and to give interpretation in accordance therewith, * * *."

In seeking to ascertain the legislative intent, we find, among other things, that a deputy constable must possess the same qualifications and take the same oath of office as a constable.

Section 11754, R. S. Mo. 1929, relating to the appointment of deputies by constables, states:

> "Every constable may appoint deputies who shall possess the same qualifications as the constable, who shall take the same oath of office and for whose conduct he shall be answerable, which appointment and oath shall be filed in the office of the clerk of the county court; said deputy or deputies, so appointed, shall devote his time to the duties of such office, provided, no such deputy or deputies shall be appointed who is or may be directly or indirectly connected with or engaged in the mercantile business, or a member of any firm engaged

> in such business, or a member of or connected with any collection agency, credit house, installment house or loan agency where money or moneys are sought to be collected by suit; and any service of writ, process or execution in any court by such pretended deputy shall be void."

In the case of State v. Pollock, 49 Mo. App. 445, l. c. 446, the court in discussing the powers and duties of a deputy constable as an officer of the county, said:

> "He was in the county in which his township was located, and as such officer he had powers and duties over the entire county."

Bearing in mind that the underlying reason for the enactment of Section 2847, supra, was evidently for the purpose of preventing officers from becoming obligated to each other, and that a duly appointed and qualified deputy constable is a county officer, we are of the opinion that they come within the prohibition of the above section.

We must next determine, however, whether the prohibition as contained in Section 2847, supra, is mandatory or directory. The court in the case of State ex rel. Howell County v. Findley, 101 Mo. 368, l. c. 372, in holding that the above statute was merely directory, and not designed to avoid the bond where the statute has been disregarded, said:

> "The judges of the county court, it is true, ought not to have accepted one of their number as a surety on the official bond of the collector, as the statute forbids them from so doing, but statutes of this sort are regarded as directory merely, and as not designed to avoid the bonds where the statute has been disregarded."

From the foregoing, we are of the opinion that a deputy constable ought not to be named as a surety on the official bond

of a constable as the statute forbids it. However, if same is done, it will not avoid the bond nor release the sureties.

Respectfully submitted,

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Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

MW:HR