SECURITIES DEALER'S BOND:

Under Section 7744 R. S. Mo. 1929, the total aggregate liability of surety on Securities Dealer's Bond is limited to $5,000.00.

9/12

August 26, 1933.

FILED
79

Mr. Neal J. Ross,
Commissioner of Securities,
Jefferson City, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"Sec. 22 of Missouri Securities Act provides for a dealer in securities to file with this Department 'a bond in the sum of five thousand dollars ($5,000) running to the people of the state of Missouri in such form as the commissioner may designate, such bond to be conditioned upon the faithful compliance with the provisions of this act by said dealer and by all salesmen registered by him while acting for him. Such bond shall be executed as surety by a surety company having a net worth of not less than $1,000.00 and authorized to do business in this state.'

Florida enacted a similar provision. The Attorney General of that state ruled Sept. 10, 1931 as follows: 'It is my opinion that the total maximum liability for all purposes is $5,000.00. In other words when liability is created under this bond, whether it is by the dealer or by one or more of his agents, and a total judgment of liability of $5,000.00 is reached, that this is the full liability of the principal and sureties on this bond.'

The question of total liability seems to be moot in this state. This Department has issued opinion that the total aggregate liability is $5,000 but certain surety companies are not satisfied with such ruling, stating that the statute itself is questionable. Such companies, cannot,of course, write bonds with indeterminate liability, and as result, many asking for such bonds are flatly refused and informed that the company is 'not writing dealers bonds.'

It is requested that you rule as to the total aggregate liability under Sec. 22 of Missouri Securities Act. Also, am attaching form of bond adopted by previous administration, with insertion of the aggregate clause which they permitted in the bond. Some surety companies prefer a cancellation clause allowing them to withdraw upon 30 days' notice. I

see no objection to such clause. Will you please submit a change of form in the bond of dealers in securities, to remove any ambiguities that may exist?"

You inquire as to the total aggregate liability of the bond under Section 22 of the Missouri Securities Act, now found as Section 7744, R. S. Mo. 1929, and request a form of bond to remove any ambiguities of the one which you enclose.

The pertinent part of Section 7744, R. S. Mo. 1929, is as follows:

"* * * If the commissioner shall find that the applicant is of good repute and has complied with the provisions of this section including the payment of the fee hereinafter provided he shall register such applicant as a dealer upon his filing a bond in the sum of five thousand dollars ($5,000) running to the people of the state of Missouri in such form as the commissioner may designate, 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. Such bond shall be executed as surety by a surety company having a net worth of not less than $1,000,000 and authorized to do business in this state. * * *"

The bond is conditioned upon the faithful compliance with the conditions of this chapter by "said dealer and by all salesmen registered by him while acting for him." Such dealer shall be registered "upon his filing a bond in the sum of five thousand dollars ($5,000)." We believe it is apparent from the reading of the Section that the $5,000.00 bond required was to cover the defalcations of the dealer, or his agents while acting for him, and that the sum of $5,000.00 is the maximum penalty that can be exacted under the bond. We do not believe that the Section can be so read as to make the surety liable for a sum in excess of the sum of $5,000.00, even though the total defalcations by the dealer, or his various salesmen, would actually exceed the penal sum of $5,000.00. If the surety should be compelled to pay $1,000.00 because of the default of one salesman of the dealer, we believe that the surety's liability automatically is reduced to $4,000.00 so far as additional defalcations are concerned. We do not believe it was the intention of the Act that the Surety's liability should be to the extent of $5,000.00 on each of the dealer's salesmen, making the total aggregate liability dependent upon the number of salesmen employed.

It is well settled that a statutory bond includes the statutory provisions regulating the bond. The view we take of it, however, is that there is no ambiguity in the statute, and that the sum of $5,000.00 is the total maximum liability in all events. We do not believe there is any ambiguity in the

bond which you enclose, but we have rewritten the bond so that no ambiguities can arise in the future. We are enclosing the bond.

Very truly yours,

Frank W. Hayes

Assistant Attorney General.

APPROVED:

_____

Attorney General.

FWH:S