Surety Companies, Not to Exact Indemnity. Indemnity, Not to Be Exacted by Surety Companies. Bonds, Payment of Official. Public Officers, Bonds Of, Public Charge.

Senate Bill, No. 44, surety companies transacting business in this state are prohibited from exacting indemnity bonds or other security from public officers for whom they are surety.

Officers who took office the first Monday in January, 1911, prior to the passage of Senate Bill No. 44, should present their claim to the proper officers for the premium paid by them running from the time of the approval of the act until the expiration of the bond.

February 21, 1911.

Hon. H. R. Cunningham,
Commissioner of Insurance,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of February 17th, 1911, wherein you ask my interpretation of Senate Bill No. 44, being an act prohibiting surety companies from exacting indemnity bonds or security from public officers before furnishing official bonds and providing that such official may furnish either surety or individual bonds or other security. You have also transmitted a letter bearing date of February 14th, 1911, from the American Surety Cocpany of New York, and signed by Geo. M. Bettie, manager at Salt Lake; also a letter dated at Helena, February 15, 1911, signed by Edw. C. Murray, general agent., of the Massachusetts Bonding and Insurance Company. I also have a letter signed by J. A. Shoemaker bearing date at Helena, Montana, February 20th, 1911, wherein he makes inquiry as to the liability of the company to

reimburse its officers who took office the first Monday of January and prior to that time executed and paid premiums on official bonds furnished by the National Surety Company of New York. I will take up the questions submitted in all of these letters seriatim.

The first question submitted by you is practically as follows.

> "Can section one of senate bill, No. 44 be construed so as to prevent the company from taking an application from a public officer where the application involves the personal indemnity of the applicant?"

You are advised that in my opinion Section One of Senate Bill, No. 44, Session Laws of 1911, cannot be construed to prevent a surety company from requiring the personal indemnity of the officer on whose behalf bond is furnished. While section one of the act under consideration is rather vague in its terms, the intent of the enactment seems to be apparent, especially in view of the wording of the title which,

> "prohibits surety companies from exacting indemnity bonds or security from public officers before furnishing bonds."

It is my opinion that the supreme court of this state, if called upon to interpret this act would find that the legislative intent was to prevent surety companies who receive a reasonable premium for the indemnity which they furnish the state or municipality from exacting bonds signed by individuals indemnifying them against the default of the officer.

Your second question concerns the interpretation of section three of the bill above referred to and especially as to whether deputies and employees in various offices of the state, county and city officers are included under the provisions of the bill, and whether if such bond when given should run from the deputy or employee to the principal instead of the state, the charge therefore would be a claim against the official department or a personal claim to be paid by such deputy or employee.

You are advised that in my opinion senate bill, No. 44, relates only to those state, county and city officers who are required by law to furnish bonds. Deputies generally are not required to furnish bond although some deputies may be required to furnish bonds by their principals, as in the case under the provisions of Section 143, Revised Codes, with the deputy secretary of state, deputy state treasurer, deputy state auditor and deputy state superintendent of public instruction. In the case of these deputies, however, as to whether or not a bond is furnished is optional with the principal, but if the principal officer in each of the above enumerated cases should require a bond, I believe that under the provisions of Section 143, Revised Codes, taken in connection with Senate Bill No. 44, Session Laws of 1911, the premium charged would be a proper charge against the state or subdivision of state government.

If I am correct in the conclusions hereinabove reached, the questions submitted by you and those contained in the letters of Geo. M. Bettis and Edw. C. Murray are disposed of.

The question raised by J. A. Shoemaker, state manager of the National Surety Company of New York, is as to where the liability rests for premium payments of county officers elected at the last general election. Most of these officers took office the first Monday in January and they would be liable to pay for their official bonds until Senate Bill No. 44, Session Laws of 1911, became effective which was after its passage and approval, the date of approval being February 2nd, 1911. The premium upon the official bond for the balance of the term is regulated by Senate Bill. No. 44, above mentioned and the liability rests with the county. In the case of the county treasurers who go into office March 1st, the entire premium should be paid by the county under the provisions of this law. In the event that county officials have paid their yearly premium in advance a claim made by the official and presented to the board of county commissioners would be a proper charge against the county to the pro rata amount of the premium from February 2, 1911, to December 31, 1911.

I believe that I have herein covered the questions submitted by you and the other correspondence.

Yours very truly,

ALBERT J. GALEN,

Attorney General.