

State Treasurer—Official Bond—Reduction in Amount of.

The State Treasurer is not obliged to continue the \$500,000 bond furnished by him upon qualifying for the office, but may reduce it to \$200,000 in accordance with the provisions of Chapter 229, Laws of 1921.

J. W. Walker, Esq.,
State Treasurer,
Helena, Montana.

My dear Mr. Walker: •

You have submitted the following state of facts for my opinion:

When you qualified for the office of State Treasurer a bond was furnished by you in the sum of \$500,000 signed by the United States Fidelity & Guaranty Company. By Chapter 229 of the Laws of 1921 the amount of the bond required from the State Treasurer was reduced to \$200,000. The premium on the \$500,000 bond was paid in advance for one year at the time of its execution, and the United States Fidelity & Guaranty Company is now demanding another year's premium in advance for the purpose of continuing the bond in force. You have asked the company for a reduction of the amount of the bond to \$200,000, the amount required by said Chapter 229 and the company takes the position that the bond was issued for the term of your office and that you and the State of Montana are obliged to continue the bond in force in this amount until the expiration of your term and to pay the premium thereon. You inquire whether it is necessary to continue the \$500,000 bond for the balance of your term or whether a \$200,000 bond is sufficient.

The bond furnished by the company on file in the Secretary of State's office contains no provision as to the time that the same shall run, nor does it on its face refer to the premium to be paid or the time of payment thereof. It reads as follows:

"UNITED STATES FIDELITY AND GUARANTY COMPANY
 NO..... BALTIMORE, MARYLAND. \$500,000

"OFFICIAL BOND

"KNOW ALL MEN BY THESE PRESENTS: That we, J. W. Walker, of Kalispell, County of Flathead and State of Montana, as Principal, and the UNITED STATES FIDELITY AND GUARANTY COMPANY, of Baltimore, Maryland, a corporation created and existing under the laws of the State of Maryland, as Surety, are held and firmly bound unto the STATE OF MONTANA, in the penal sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000), lawful money of the United States, to be paid to the said State of Montana, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

"SEALED with our seals and dated this 9th day of November, 1920.

"THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas, the said J. W. Walker has been elected to the office of STATE TREASURER within and for the State of Montana.

"NOW, THEREFORE, If the said J. W. WALKER shall well, truly and faithfully perform all official duties now required of him by law, and also all such additional duties as may be imposed on him by any law of the State subsequently enacted, and if he shall account for and pay over and deliver to the person or officer entitled to receive the same, all moneys or other property that may come into his hands as such State Treasurer, then this obligation to be null and void; otherwise to remain in full force and effect.

"J. W. WALKER (SEAL)

"UNITED STATES FIDELITY AND
 GUARANTY COMPANY.

"By Clinton O. Price,
 Attorney-in-Fact.

"The within bond and the Surety thereon is hereby approved this thirty-first day of December, 1920.

"S. V. STEWART,
 Governor "

The bond furnished by the surety company is not in the nature of a mutual contract running for the term of your office. It is subject to the payment of an annual premium, and undoubtedly if this premium is not paid the company will claim the right to cancel the bond for non-payment of premium. It is not conceivable that the company would be either willing or obligated to continue the bond in force without

the payment of the premium. Conversely, when the bond is terminated for any legal reason before your term of office has expired, the company cannot be heard to say that it has the option to continue the bond in force and require the payment of the premium when the law does not require any such bond.

While this matter has seldom reached the high courts of any jurisdiction, in the case of Fidelity & Deposit Co. of Maryland v. Libby, 101 N. W. 994, a situation almost identical with the present one arose and the court, in holding that a bond which did not stipulate how long it should remain in force left the obligee at liberty to decline to make payment and thus end the contract, used the following language:

"The plaintiff contends that it is also implied that the obligation was to continue during the incumbency of Libby under his then present appointment as deputy; that he was not discharged from his office at the time of the giving the new bond, but remained continuously therein; and that the county board were powerless to impair the obligation of the contract, or to release the plaintiff from its obligation thereon. We suspect that, if it should turn out that Libby has defaulted since the expiration of the first year, the plaintiff will entertain a different opinion. The fair inference from the recitals in the application, of which both the treasurer and the county board had full knowledge, is that the plaintiff undertook to become and remain bound so long, and so long only, as the agreed annual premium should be paid in advance. In this respect the contract is of the same character as the ordinary policy of insurance, to which it is generally analogous, and out of which it grew. It is a contract for one year, renewable annually by the payment of a stipulated premium. If the premium is not paid, it 'lapses' or ceases to be obligatory as between the parties to it, * * *"

It is, therefore, my opinion that there is no obligation upon your part or upon the part of the State of Montana to continue the \$500,000 bond in force or pay the premium thereon, but that, by giving notice to the company that executed the bond that you do not desire it continued, all obligation to pay further premiums thereon will cease, and that Chapter 229 of the Laws of 1921 requires only that you furnish bond in the sum of \$200,000.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.