

Surety Bonds—Department of Agriculture—Justification of Sureties.

The Department of Agriculture should require each surety on a personal bond, where there are only two, to justify in the full amount of the bond.

Where there are three or more sureties on such a bond, each may justify in an amount less than the amount of the bond providing the totals of the justifications equal a sum twice that of the bond.

Chester C. Davis, Esq.,
Commissioner Department of Agriculture,
Helena, Montana.

My dear Mr. Davis: .

You have requested an interpretation of Section 7192, Revised Codes of 1907, as applied to bonds taken by your Department.

The section referred to reads as follows:

"In all cases where an undertaking with sureties is required by the provisions of this code, the officer taking the same must require the sureties to accompany it with an affidavit that they are residents and householders or freeholders within the state, and are each worth the sum specified in the undertaking over and above all their just debts and liabilities, exclusive of property exempt from execution; but when the amount specified in the undertaking exceeds three thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth

amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties."

The effect of this section is to require security for double the amount of the bond. You will note that it requires the sureties "to accompany it with an affidavit that they are each worth the sum specified in the undertaking over and above their just debts." Thus, if the bond is for \$4,000 and there are two sureties, each must justify for the sum of \$4,000, making a total of \$8,000. If there are more than two sureties, for example three, they may each justify for amounts less than that expressed in the undertaking, providing the total amount of the three justifications be equal to that of two sufficient sureties. Thus, if the undertaking is for \$4,000, two sureties may justify in amounts of \$3,000 each and the third in the amount of \$2,000, making a total of \$8,000, equal to that of two sufficient sureties.

A question very similar to this was passed upon by Attorney General Kelly, and his opinion is found in Volume 5, page 75, of the published Opinions of the Attorney General.

It is my opinion that on all bonds taken by your Department, you should require each surety, where there are only two, to justify in the full amount of the bond. Where there are three or more, each may justify in an amount less than the amount of the bond, providing the totals of the justifications equal a sum twice that of the bond.

This does not, of course, apply to bonds on which surety companies are sureties.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.