Bonds—Depository Bonds—Counties — County Commissioners—Sureties.

Where personal bonds are offered as security for county deposits, the sworn statement accompanying them must contain sufficient information as to the resources and liabilities of the sureties to enable the County Commissioners to determine whether or not the bonds are sufficient to secure the safety of the county money to be deposited.

Louis E. Haven, Esq.,
County Attorney,
Hardin, Montana.

My dear Mr. Haven:

You have requested my opinion relative to the provisions of Chapter 89, Session Laws of 1923, which require a sworn statement of the resources and liabilities of sureties when a depository bond is signed by personal sureties.

This Act is an amendment of Section 4767, Revised Codes of Montana of 1921, and, with reference to the question submitted by you, reads as follows:

> "The Treasurer shall take from such banks such security as the Board of County Commissioners, in the case of a county, or the Council, in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits on demand together with the interest thereon. Such securities shall consist of bonds of some surety company empowered to do business in the State of Montana, government bonds or securities, state bonds or warrants, county bonds or warrants, or such other bonds or securities which are supported by general public taxation, (or personal bonds) provided, however, that all such personal bonds must be accompanied by a sworn statement of the resources and liabilities of each of the sureties thereon."

It was clearly the intent of the Legislature, in enacting this law, to require that the personal sureties on such depository bond disclose, under oath, the fact that each was financially responsible for the obligation that he assumed when he signed the bond, in order that the Board of County Commissioners might be fully informed when determining whether the bond is sufficient and should be accepted and approved.

The law requires the Board of County Commissioners to accept and approve such bonds only when it deems them fully sufficient to insure the safety and prompt payment of all such deposits on demand, together with the interest thereon.

Unless the sworn statement of resources and liabilities contains something more than a mere statement that the surety's resources are so much and his liabilities so much, the Commissioners are not fully informed, and it would not give them any more information than was formerly given in the justification on such bonds, where the surety took oath that he was worth a specified amount over and above his liabilities and exemptions from execution sale.

It is, therefore, my opinion that it is not only necessary that such statement show enough of the several items and values thereof constituting the resources of the surety, in order to show that he is financially qualified to sign the bond, but that the encumbrances and liabilities should be shown in full, to the end that the Board of County Commissioners may have before it the necessary information relative to the financial responsibility of the sureties on a depository bond to enable it to determine whether the bond is sufficient to secure the safety of the county money to be deposited in the bank presenting the bond.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.