

Opinion No. 53**Official Bonds of City and Town
Officials — Liability of Sureties
on Official Bonds**

HELD: 1. Official bonds of all appointive or elective city or town officials must be term bonds and a new bond must be filed on re-election or re-appointment. Continuation certificates of initial bonds may be used and filed, providing such certificates meet all the requirements of the initial bond of the officer.

2. The liability of a surety of a town or city official appointed for an indefinite term is limited to the penal sum of the bond, notwithstanding the fact such official continues in office for many years, by virtue of his original appointment, during which time annual premiums are paid.

December 30, 1955

Mr. R. E. Towle
State Examiner
Helena, Montana

Dear Mr. Towle:

You have requested my opinion concerning the type of bonds which are legally proper for elected and appointed officials of cities and towns. You advise me that city officials elected and appointed for specific terms have filed continuation certificates of term bonds and you ask if this is the proper procedure.

The purpose of an official bond is to give recourse against the sureties if the public officer does not discharge his trust. Section 6-306, R.C.M., 1947, defines the provisions of an official bond and states in part:

"The condition of every official bond must be that the principal shall well, truly, and faithfully perform all official duties then required of him by law, and also such additional duties as may be imposed on him by any law of the state subsequently enacted, and that he will 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 officer . . ."

While many city officials are required to give bonds, yet the penal amount of the bond is not in all instances fixed by statute. Under the aldermanic form of city government, Section 11—723, R.C.M., 1947, requires the city treasurer, city clerk and city marshal to give bonds and such other city officers must furnish bonds as the council by ordinance may require, but the amount of the bond is left to the discretion of the council.

Under the Commission form of city government, Section 11—3124, R.C.M., 1947, provides that the mayor and councilmen shall each furnish a bond in the sum of \$5,000. The city commissioners, under the Commission-manager plan of city government, are required to file an official bond, Section 11-3244, R.C.M., 1947, and the city manager or the commission may, under Section 11-3324, require a bond from any city employee.

There is no uniformity in our statute as to the amount of official bonds and the requirement of bonds of all city officials. However, as has been observed above, the city council or the city commission has wide discretionary powers in many instances in fixing the amount of official bonds and designating those city employees who should be required to give bonds. That the city council or commission should give serious consideration to the amount of the bonds required is apparent when it is realized that often the only protection the municipality has is recourse against the sureties for recovery of funds.

The extent of a surety's liability is defined in Section 6-311, R.C.M., 1947, which provides as follows:

"Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk."

This statute in effect establishes liability for the term the officer is elected or appointed. In *State ex rel. Nagle vs. Stafford*, 99 Mont. 88, 43 Pac. (2d) 636, our Supreme Court held that a term bond furnished by an official appointed for a fixed term could not be made the basis of liability for the official's acts done as his own successor. Applying this rule to a city or town officer who is appointed for an indefinite term or who holds office until removed and who is not reappointed at fixed intervals, the original bond will continue in force for the full term of the officer who occupies the position which might continue for many years. In 50 Am. Jur. 1145, the text states the general rule which would apply to the bonds of such appointive officer:

" . . . A bond and the renewal thereof are, however, ordinarily construed as a continuing contract which, in the same manner as a life insurance policy, is continued in force by the payment of annual premiums, and where the liability of the surety is limited in the bond to a specified sum, the surety may not be held liable in an amount in excess of the penalty named although defaults may have occurred during two or more terms while the bond was in force . . ."

The security of an additional bond for appointive city or town officers may be realized if the officer is appointed for a definite term and reappointed for each subsequent term. On his re-appointment he must give a new bond. This is particularly true in view of the following which was stated in *State ex rel. Nagle vs. Stafford*, supra:

"Our statutes make no distinction between an official elected or appointed for the first time to office and those re-elected or re-

appointed; all must qualify in the manner prescribed, or a vacancy occurs in the office, and this is the general rule . . .”

In view of the holding in *Nagle vs. Stafford*, supra, that a new bond must be furnished upon the re-election or re-appointment, your inquiry concerning continuation certificates is easily answered. Such continuation certificates of a term bond of a re-elected official or a re-appointed official must meet all the requirements of a new bond. Such a certificate must be recorded in the “Record of Official Bonds” which is required by Section 6-314, R.C.M., 1947. Also filing is a requisite as specified in Section 6-305, R.C.M., 1947, after approval of the bond as required in Section 6-304, R.C.M., 1947. In fact, no useful purpose would be served by procuring continuation certificates of a term bond on re-election or re-appointment as such a certificate must in fact meet all the requirements of an initial bond.

It is therefore my opinion that official bonds of all appointive or elective city or town officials must be term bonds and a new bond must be filed on re-election or re-appointment. Continuation certificates of initial bonds may be used and filed, providing such certificates meet all the requirements of the initial bond of the officer.

It is also my opinion that the liability of a surety of a town or city official appointed for an indefinite term is limited to the penal sum of the bond, notwithstanding the fact such official continues in office for many years by virtue of his original appointment, during which time annual premiums are paid.

Very truly yours,
ARNOLD H. OLSEN.
Attorney General.