

Surety Company Bonds, Indemnity For. Official Bonds, Indemnity For. Sureties, Indemnity Bond, Liability Of.

Sureties on an indemnity bond given to a surety company prior to February 3rd, 1911, are not relieved from liability by the provisions of Chapter 6, Laws of 1911, approved February 3rd, 1911.

Helena, Mont., July 14, 1911.

Hon. Elmer E. Esselstyn,
State Treasurer,
Helena, Montana,

Dear Sir:

I am in receipt of your letter of the 12th inst., relating to indemnity bonds of surety companies. I understand from your letter that some time prior to February 3rd, 1911, you furnished to the state a surety company bond, and that one of the conditions of the issuance of said bond by the surety company was the giving by you of an indemnity bond to the company. Subsequent to that time and on February 3rd, 1911, Chapter 6 of the Session Laws of 1911 was approved. By the terms of that Chapter surety companies are prohibited from requiring an indemnity bond, the question now being whether the enactment of this law has the effect of relieving the bondsmen who signed the indemnity bond prior to such enactment. The giving of the surety bond by the company and the taking by it of the indemnity bond was a part of the same transaction, and together constituted your contract with the company. A subsequent law could not have the effect of changing that contract and still holding the company liable on its bond. If the law had the effect of nullifying the indemnity bond given to the company, it would also have the effect of relieving the surety company from liability on its bond. Furthermore, the provisions of Section 1 of Chapter 6 uses the phrase "shall hereafter be permitted," from which it is apparent that it was not the intention of the legislature that the law should have relation to contracts of this character then in existence.

You are, therefore, advised that the law does not of itself have the effect of relieving the bondsmen from the indemnity bond.

Yours very truly,

ALBERT J. GALEN,
Attorney General.