

Surety Companies, Right to Impose Conditions. Bonds, of Public Officers, Right of Surety Company to Indemnity. Public Officers, Bonds Of.

By the provisions of Chapter 6, Laws of 1911, a surety company is not prohibited, (1) from requiring a public officer who appoints deputies to require such deputies to furnish a bond to the public officer, (2) to insist that city and county treasurers and the state treasurer shall require depository bonds of banks in which public funds are deposited.

But a surety company is prohibited by said Act from requiring an indemnity bond from the public official himself.

November 15, 1911.

Hon. Harry R. Cunningham,
State Auditor and Comm, of Insurance, Ex-Officio,
Helena, Montana.

Dear Sir:

You have presented to this office a request for construction of Chapter 6, Laws of 1911, relative to the rights of surety companies to impose conditions upon the execution of bonds to public officials. This request has been presented upon three different statements of facts: (1) the right of a surety company to insist that a public official appointing deputies shall require such deputies to furnish bond to the official; (2) the right of a surety company to insist that city and county treasurers or state treasurers shall require depository bonds of banks in which public funds are deposited; and (3) the right of a surety company to insist upon an indemnity bond from the public official.

With reference to the first question, I would respectfully call your attention to Sec. 416 of the Revised Codes of Montana, which provides:

"Every officer or body appointing a deputy clerk or subordinate officer may require an official bond to be given by the person appointed and may fix the amount thereof."

This section gives express authority to the public official to require his deputy to furnish bond and I believe that it is a right which

may be properly demanded by the surety furnishing the bond of such official. If the principal fails or neglects to take advantage of the provisions of this statute, neither he nor the surety may complain that they have suffered loss by reason of defalcation of a deputy. The principal is bound by the act of his deputy and the bond furnished by the surety company to the principal is not only a bond indemnifying the public for any act of the principal but is likewise a protection against loss through neglect or mis-conduct of deputies or subordinate officers. A surety company might be willing to furnish an official bond to a certain officer but would not be willing to furnish a bond to the deputies of such official. Said Chapter 6, Laws of 1911, does not require a surety company to furnish a bond to every official applying therefor and it is discretionary with such surety whether or not it will furnish bond to any particular applicant, but it is my opinion that the requirement that deputies appointed by such official should likewise be bonded to the official in accordance with the provisions of Sec. 416, above quoted is a reasonable requirement and may lawfully be demanded by the surety company furnishing the bond and is not prohibited by the provisions of said Chap. 6.

As to the right of the surety company to insist that officer's handling public funds should require banks or depositories to furnish to such official security for the safe keeping of such funds, I believe is likewise a reasonable regulation and requirement on the part of such surety company. The surety company undertakes to protect the public against the misconduct or neglect of the principal officer with whom is charged the duty of accounting for the public funds with him deposited, but in the administration of the affairs of these offices it becomes not only necessary but sound business judgment to deposit the public funds in some bank or banks in the community. The security to be furnished by such banks as requested by the surety company is not in my opinion such indemnity or other security as is mentioned or referred to in section 1 of the act in question. The bond furnished by such depository is a protection to the official himself and it cannot be presumed that a surety furnishing the bond for the faithful conduct of a public official would likewise furnish a bond to the banks or depositories in which the public funds may from time to time be deposited that they would remain in a solvent condition. It is, therefore, my opinion as above indicated that the requirement that depositories furnish to the official, bonds as a condition to the furnishing of bond to the official himself by the surety company is a reasonable requirement and is not within the prohibition or meaning of Chapter 6, Laws of 1911.

We come now to the third phase of the question presented, that is, as to the right of a surety company to require of an official, indemnity of a personal character to the surety company itself. For instance with reference to the state treasurer, I am informed that the bond of \$500,000 required by law to be furnished by the state treasurer is now furnished by the American Surety Company, U. S. Fidelity and Guaranty Company and by the National Surety Company jointly, and that

these surety companies require from the state treasurer a return or indemnity bond of \$50,000,—in other words the surety companies require of the state treasurer that as a condition to furnishing his bond as state treasurer, he will furnish in return to the surety company another bond or indemnity that the surety company will not become liable by reason of his misconduct or neglect on the principal bond furnished the state. This is in my opinion a clear violation of the provisions of Chapter 6, Laws of 1911, and is the very practice heretofore followed by the surety companies which this law was intended to prohibit.

I call your attention to the office of state treasurer in particular in order that you may investigate the facts as hereinabove indicated and should you deem it advisable to proceed in accordance with the authority vested in you by said Chapter 6, Laws of 1911, with a view that the practice heretofore followed by the surety companies within the state may cease.

Yours very truly,

ALBERT J. GALEN,

Attorney General.