

Security, Right of to Withdraw From Official Bond. Official Bond, Right of Security to Withdraw. Bond—Official, When Security May Withdraw From. Public Officer, Official Bond, Withdrawal of Security.

Method of Procedure for Withdrawal of Security From Official Bond Considered, and Law Relating Thereto Construed. See Opinion.

February 2, 1915.

Hon. Olaf Jensvold,
Chairman, Board of County Commissioners,
Roundup, Montana.

Dear Sir:

I am in receipt of your letter of the 22nd ultimo, submitting for the consideration of this department certain questions relating to the office of the Clerk of the Court in that county. It appears from the records submitted that Mr. Jarrett was elected Clerk of the Court in and for the county of Musselshell; that his official bond consisted of a bond of the American Surety Company. On or about the 1st day of July, 1914, the surety company served a notice upon Mr. Jarrett and also upon the county clerk, that they desired to withdraw from such bond, and that said company would cancel the bond ten days from the date of filing said notice, and that this notice was filed in the office of the county clerk on the 18th day of July, 1914. Accompanying this notice was a letter from the surety company to the county clerk stating the reasons why the company desired to cancel the bond. On the said 18th day of July, 1914, the county clerk notified the clerk of the court that

such notice had been filed, and on September 15th, 1914, the county clerk also notified the Judge of the District Court that the county commissioners did not approve of "a certain official bond filed by W. G. Jarrett, Clerk of the Court on the 28th day of July, 1914." This letter to the District Judge, also by way of explanation, informed the judge that Mr. Jarrett's bondsmen had withdrawn from his official bond.

Mr. Jarrett has not filed another bond, the question involved being:

Is the office of the clerk of the District Court now vacant, so that the county board may make appointment to fill the vacancy, and if not vacant, and if Mr. Jarrett's official bond has been cancelled, what procedure is necessary to compel him to file another bond, or to authorize the board to declare a vacancy?

1. It is the duty of the Judge of the District Court to pass upon the official bond of the Clerk of the Court.

Section 380, Revised Codes of Montana.

Under the provisions of Section 2978, Revised Codes, it is the duty of the county board at the March and September meetings of each year to examine all official bonds of county officers, and if bonds are not found satisfactory, the board must report the facts to the District Judge; but this section relates only to the examination of bonds, not to their approval. It does not appear from their transcript of proceedings that the bond filed by Mr. Jarrett on the 28th day of July, 1914, was ever submitted to the District Judge for approval.

2. The provisions of the Statute relating to proceedings to be observed in cases where the official bond becomes void or insufficient for any reason, are found in Sections 403 to 412 inclusive, Revised Codes. The particular method of procedure is contained in Sections 404 to 406 inclusive, wherein it is provided:

(a) That the surety desiring to be relieved must file with the officer whose duty it is to approve the official bond, a statement in writing, setting forth the desire of the surety to be relieved, and the reasons therefor;

(b) A copy of this statement must be served upon the officer;

(c) If no new bond is filed within ten days, it is the duty of the Judge to make an order declaring such office vacant.

The following sections above referred to, contain provisions relative to procedure for supplementary bonds, and otherwise, but all of these provisions only relate in detail what must be done to carry out the direction given in Sections 404, 405 and 406. This is made apparent from the provisions of Section 411, wherein it is provided:

"No surety must be released from damage or liabilities for acts of omission, or causes existing or which arose before the making of the order mentioned in 406."

The reference in Section 411, to the order mentioned in Section 406, would seem to indicate that the procedure indicated in Sections 404, 405 and 406 must in all cases be observed before the surety is relieved from liability.

It does not appear from this record that this bonding company ever followed these provisions, for their notice was not served upon the District Judge, who alone is vested with authority to approve the bond. If

this be the case, then the surety company is not yet relieved from the official bond of Mr. Jarrett, but still continues his surety.

The filing by Mr. Jarrett of an "official bond" on the 28th day of July, 1914, could at least have no greater effect than a waiver by Mr. Jarrett of the notice specified in Section 405, but in as much as the District Judge has never passed upon that bond, it still remains as a bond submitted upon which no action has as yet been had. Hence, the order named in Section 406 could not be made, because by the provisions of Section 407 and 409, the official is given the right and authority to file either a new or supplementary bond when his sureties withdraw.

In view of these facts, I would suggest that this "official bond" filed by Mr. Jarrett in July, 1914, together with a statement of all the facts, including the copy of the notice and letter served by the surety company upon Mr. Jarrett and the county clerk, be submitted to the Judge of the District Court, and if he disapproves of the bond, and is of the opinion that the surety company is released, he may cause the notice mentioned in Section 405 to be served upon Mr. Jarrett, and at the expiration of ten days, make the order named in Section 406, or if the Judge reaches the conclusion that Mr. Jarrett has waived this notice, he may at any time, make the order named in said section, declaring the office vacant. In following this course of procedure, the Board would be discharging its full duty, because the statute in the sections above referred to confer the authority and impose the duty on the Judge of the District Court to determine upon the sufficiency of official bonds.

Yours very truly,

D. M. KELLY,

Attorney General.