

Bonds—County Commissioners—Deposits—Sureties.

County Commissioners may accept and approve for a part of its face value an indemnifying bond given to cover county deposits by agreement with the principal and sureties.

L. Q. Skelton, Esq.,
State Examiner,
Helena, Montana.

My dear Mr. Skelton:

You have submitted to this office the question whether the County Commissioners, in approving an indemnifying bond intended to cover county deposits, may accept and approve the bond for a less amount than that for which the face of the bond calls.

When a bond is presented to the Board of County Commissioners as security for deposits three courses are open to the Commissioners:

First: They may accept the bond as offered.

Second: They may reject the bond as offered.

Third: They may consider the bond sufficient to cover a portion of the face, and accept and approve it for an amount less than that for which the face of the bond calls. This, of course, does not bind the principals or the sureties unless they acquiesce in it. The County Commissioners cannot create a binding obligation on the principal or sureties by accepting the offer in part only. However, if the Board of County Commissioners notifies the principal that the bond will be accepted and approved for an amount less than the face of the bond, the principal then has two courses open to him, viz.:

He may withdraw his bond and refuse to accept the offer to accept it for a reduced amount; on the other hand, the principal, by securing the written consent of the sureties, may consent to the acceptance of the bond for less than the face of the bond, and if this is done the bond is valid for the amount for which it was approved. I do not advise this procedure, however, on account of the difficulty that might be occasioned to prove that the sureties gave their consent to the change in the terms of the bond. I recommend that in such cases a new bond be secured in the reduced amount.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.