

Officers—Official Bonds—Cancellation—Sureties.

Under Section 492, R.C.M., 1921, the surety on an official bond may not withdraw from the bond of an officer except when a new bond in lieu of the existing one is furnished, in which case the liability of the surety on the old bond for future acts ceases when the new bond becomes effective.

R. N. Hawkins, Esq.,
Assistant State Examiner,
Helena, Montana.

January 31, 1930.

My dear Mr. Hawkins:

You have submitted a cancellation notice by the Federal Surety Company of future liability under a bond executed by it as surety for John P. Dyer, constable of Roundup, Musselshell county, Montana.

The liability of the company under this bond is for the period of two years from January 11, 1929. There is no provision in the bond

which gives the surety the right to withdraw from the bond or providing any terms upon which such withdrawal may be made. The purported cancellation notice recites that it is given in pursuance of certain terms of the bond providing for the right of the surety to terminate its contract, but a reading of the bond itself discloses that there are no provisions therein at all relating to the termination of the liability of the surety.

Under Section 492, R.C.M. 1921, the surety on an official bond may withdraw therefrom if the officer provides a new bond in lieu of the existing one, and the liability of the surety on the old bond ceases upon the new bond becoming effective, except as to liabilities previously incurred. In the absence of any special provision in the bond giving the right of termination of liability to the surety the only way that the surety can relieve itself of its obligation on the bond is in the manner provided by the statutes as above stated.

It is therefore my opinion that until a new bond is furnished and approved by the principal in the bond in question the Federal Surety Company cannot terminate its liability under the bond in question, and that the purported cancellation notice has no legal significance whatever.

Very truly yours,
L. A. FOOT,
Attorney General.