

ceased, the official bond you gave as state treasurer could be held to apply to the faithful performance of your duties as such trustee.

It appears that Ryman died testate in Missoula County on June 1, 1926, and left a comparatively large estate. Among other things, his will in effect gave the income from bonds worth about \$43,000.00 to one Mary Stewart during her natural life, and upon her death gave the bonds themselves to the State of Montana "as a permanent endowment for the uses of the University of Montana, at Missoula, Montana." The will was admitted to probate on July 10, 1926. The Western Montana National Bank and Joseph M. Dixon, executors of the will, acted together as trustees of the property in question and paid the income therefrom to the beneficiary up to the death of the latter a few months ago. The former contemplates resigning from the trust and asking for its discharge as trustee as soon as a suitable successor can be found. Miss Stewart is still alive, being now about 58 years of age.

The provisions of the first paragraph of section 192, Revised Codes 1921, as amended by section 1 of Chapter 157, Laws of 1931, can have no application to the situation before us for it is altogether clear that at this stage of the administration of the trust the state treasurer in his official capacity is not entitled to receive or to have the custody of the bonds. Only the person appointed by the court as trustee in succession to the Western Montana National Bank may rightfully claim possession of the bonds and he must hold them until the death of Miss Stewart, be that event near or remote.

The sureties on the bond of the state treasurer can be held to answer for his acts or omissions only according to the tenor of their undertaking and this is that he "shall well, truly and faithfully perform all official duties then required of him by law, and also such additional duties as may be imposed on him by any law of the state subsequently enacted, and that he will account for and pay over and deliver to the person or officer, entitled to receive the same, all moneys or other property that may come into his hands as such officer." (Section 475, Revised Codes 1921.) Obligations of this kind

#### Opinion No. 605

##### Officers—State Treasurer—Trust —Bond.

HELD: The state treasurer's official bond cannot by order of court or otherwise be made to cover his acts as trustee of a trust created by will for the benefit of a private individual.

August 31, 1934.

You have asked our opinion on the question of whether or not in the event you are appointed trustee by the district court to execute the trust created by the will of James H. T. Ryman, de-

are strictissimi juris. Sureties have the right to rely upon the letter of their undertakings, and their liability cannot be extended by implication. A public officer's sureties are only responsible for the duties assigned such officer by the law. Where the law defines the duties of a public officer, as it does here, his sureties are responsible for the faithful performance of such duties, and are not responsible for acts which do not pertain to his office. It is well settled that sureties upon an official bond are not liable for money or securities not received by the officer as a part of the duties of his office. (*City of Butte v. Bennetts*, 51 Mont. 27, Ann. Cas. 1918C 1019; *Power County v. Fidelity & Deposit Co.*, 260 Pac. 152; 46 C. J. 1068.)

Our conclusion is, therefore, that the state treasurer's official bond cannot by order of court or otherwise be made to cover his acts as trustee of the trust property spoken of above.