

No. 164

BONDS—WHOLESALE PRODUCE DEALER—CANCELLATION OF BOND—SURETIES—COMMISSIONER OF AGRICULTURE

Held: Under the terms of a bond required by statute to be given by wholesale dealers in produce, the form of which by statute is fixed by the Commissioner of Agriculture, providing for cancellation by the surety upon written notice, such cancellation is binding.

July 8, 1941.

Mr. Albert Kruse, Commissioner
Department of Agriculture, Labor &
Industry
The Capitol
Helena, Montana

Attention: Mr. George L. Knight
Division of Horticulture
Missoula, Montana

Dear Mr. Kruse:

I have your letter enclosing correspondence with reference to cancellation of a bond furnished by an applicant for a license as a wholesale dealer in agricultural products. You request my opinion as to whether the surety on this bond may legally cancel the same.

You advise the bond in question was written on January 11, 1941, and was not filed in your office until June 11, 1941. On February 14, 1941, you received a signed notice of cancellation from the surety on said bond.

Section 2443.4 (b), Revised Codes of Montana, 1935, provides:

“Before issuing any license as provided by this act, the commissioner shall require the applicant to execute and file with him a good and sufficient bond to the state of Montana in an amount to be fixed by the commissioner based on the monthly business to be transacted by the applicant, said bond to be not less than one thousand dollars (\$1,000.00). The commissioner may from time to time require additional bond should the business transacted warrant such increase under penalty of revoking the license. Said bond to be executed by the applicant as principal and a surety company authorized to do business in this state as surety; the form thereof to be fixed by the commissioner, conditioned for the faithful performance of his duties as a dealer at wholesale; for the observance of all laws relating to the carrying on of the business of a dealer at wholesale; for the payment, when due, of the purchase price of produce purchased by him; for the prompt reporting of sales as required by law to all persons consigning produce to the dealer as licensee for sale on commission and the prompt payment to persons entitled thereto of the proceeds of such sales less lawful charges, disbursements and commission. Such bond shall cover all wholesale produce business transacted in whole or in part within the state of Montana.”

It will be noted Section 2443.4 (b), supra, provides the form of the bond shall be fixed by the commissioner. The bond submitted with your request I assume is the form fixed by the Commissioner of Agriculture. It contains the following provision:

"Furthermore, The above named surety or sureties shall have the right to terminate any future liability hereunder by serving written notice of election so to do upon the principal and upon the Commissioner of Agriculture, and thereupon the said surety or sureties shall be discharged from any future liability hereunder for any default of the said principal occurring after the expiration of thirty (30) days from and after the service of such notice."

It is said in Corpus Juris Secundum:

"A bond is regarded as a contract and is to be construed like other contracts, according to the fair import of the language used."

11 C. J. S., page 417.

Here the surety and the principal have contracted that the surety shall have the right to cancel the bond by serving written notice of election so to do upon the principal and the Commissioner of Agriculture. I see no reason why the parties to this bond may not so contract. Having done so, they are bound by such provision.

It is also said in Corpus Juris Secundum:

"Except where the character of a bond is such as to be irrevocable, a bond may be cancelled, rescinded or revoked, following which action the bond is extinguished to all intents and purposes."

11 C. J. S. page 433.

While I do not believe a provision for cancellation in the bond here in question is for the best interests of the state, and I suggest the form be changed to eliminate such a provision, yet inasmuch as this provision is contained in this bond, it is binding.

It is therefore my opinion the surety under the terms of the bond here in question has a right to cancel the same by complying with the provisions in the contract.

Sincerely yours,

JOHN W. BONNER
Attorney General