

No. 38

**REAL ESTATE BROKERS—BONDS—RENEWAL,
Effect of**

Held: A continuation bond given in pursuance to express provisions of the original bond, for consideration, has the effect of renewing the original and is binding on both parties, with same force and effect as the original.

March 4, 1941.

Mr. J. T. Kelly, Commissioner
Agriculture, Labor and Industry
The State Capitol
Helena, Montana

Dear Mr. Kelly:

This will acknowledge your letter enclosing a form of Surety Bond for Real Estate Brokers, also a Continuation Certificate of Bond used by your

department in licensing real estate brokers and salesmen. You request my opinion as follows:

"We would ask that you advise us if, in your opinion, the acceptance of the Continuation Certificate of Bond gives this Department the same or as adequate protection as the filing of a new bond."

In the original bond appear the following provisions:

"The bond may be renewed from year to year by filing with the State Real Estate Commissioner a certificate of renewal, duly executed by the surety. Said certificate of renewal upon acceptance and approval by the Commissioner shall be as binding upon the principal and surety as this bond and shall operate as a new bond for the term and amount specified in said certificate."

The continuation certificate recites that "In Consideration of an additional premium of \$———, 'the surety company continues in force its bond numbered.....on behalf of the person bonded (naming him) and in favor of the State of Montana for the extended period', subject, except as expressly modified to all the agreements, limitations and conditions thereof, and of all riders attached thereto, and in force on the effective date of this certificate; and that this certificate shall have the same force and effect as the giving of a new bond for the same amount and on the same conditions as the bond heretofore given, provided that liability under the attached bond and all continuations thereof shall not be cumulative, and that this certificate shall be for the full amount of the original bond and not to exceed \$1,000.00."

The continuation certificate is then signed by the surety, and approved by the Commissioner.

Corpus Juris defines a bond as, "An obligation in writing and under seal." (9 C.J., page 7.)

"A bond is nothing more nor less than a contract, and the sureties to a bond are simply parties to a contract; and we know of no reason why the same rules of construction should not be applied to a bond as to any other contract."

Eureka Sandstone Co. v. Long; 11 Wash. 161, 39 Pac. 446.

Section 7569, Revised Codes of Montana, 1935, provides:

"A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise."

The continuation certificate here is but a contract in writing altering the original contract or bond to the extent of changing the effective period of the bond. The parties to the original contract, namely, the principal and sureties, specifically agreed that it might be renewed in this manner, that is, by a "renewal certificate," which is the continuation certificate. The renewal adopts the provisions of the original contract by expressly providing that it shall be "subject except as herein expressly modified to all the agreements, limitations and conditions thereof" and again, "And that this certificate shall have the same force and effect as the giving of a new bond for the same amount and on the same conditions as the bond heretofore given"

It is therefore my opinion that the continuation certificate has the effect of continuing in force the terms and conditions of the original bond or contract for the extended period, and there being consideration therefor, it is legal and binding. The continuation certificate, under these conditions, in my opinion affords the same protection as the original bond or a new bond containing the same conditions as the original.

Sincerely yours,

JOHN W. BONNER
Attorney General