

## **Opinion No. 61-125**

December 6, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Marvin Baggett, Jr., Assistant Attorney General

**TO:** Mr. Willard E. Lewis, Jr., Chief, Local Government, Division Department of Finance and Administration, P. O. Box 1359, Santa Fe, New Mexico

### **QUESTION**

#### QUESTIONS

1. What is the proper amount of a surety bond of a city treasurer?
2. Must a combination city clerk-treasurer be bonded over and above the amount required for a city clerk?
3. Is there any bond required for an elective city council?
4. Does the fact that a city treasurer handles proceeds from general obligation and/or revenue bond issues require an additional bond over and above that required under question No. 1 above?

#### CONCLUSIONS

1. See analysis.
2. See analysis.
3. No.
4. No.

### **OPINION**

#### ANALYSIS

The above questions have been rephrased by this office from the recent letter received by you from the city attorney of Artesia.

Bonding requirements of a city treasurer are found in three separate provisions of our statutes.

Section 14-17-1, N.M.S.A., 1953 Comp., enacted in 1884, states:

**"Oath and bond -- Failure to qualify -- Filling vacancy.** -- All officers elected or appointed in any municipal corporation shall take an oath or affirmation to support the Constitution of the United State and the Constitution and laws of the state of New Mexico, and faithfully to perform the duties of their offices, and the trustees or council of any municipal corporation shall require from the treasurer and such other officers as they may think proper, a bond with proper penalty and surety, for the care and disposition of corporation funds in their hands, and the faithful discharge of the duties of their office, and such trustees or council shall have the power to declare the office of any person appointed or elected to any office who shall fail to take the oath of office, or give bond when required for ten [10] days after he shall have been notified of appointment or election, vacant, and proceed to appoint as in other cases of vacancy."

Section 14-18-1, N.M.S.A., 1953 Comp., enacted in 1884, provides as follows:

**"Treasurer -- Bond -- Conditions.** -- The treasurer shall give a bond to the city or town in its corporate name, with good and sufficient sureties, to be approved by vote of the council or board of trustees, and conditioned for the faithful performance of his duties as treasurer of such city or town so long as he shall serve as such treasurer, and that, when he shall vacate such office, he will turn over and deliver to his successor all money, books, papers, property, or things belonging to such city or town and remaining in his charge as such treasurer."

Section 11-2-36, N.M.S.A., 1953 Compilation, enacted in 1923, with amendments since that date pertinent to the question here, provides that:

"Bonds of municipal treasurer . . . shall be in a sum equal to 20% of the public moneys received by such treasurer during the preceding fiscal year; Provided, that in no instance shall the bond of a municipal treasurer be required in excess of fifty thousand dollars [\$ 50,000]. In case any of the officials named in this section shall furnish a bond with personal sureties, the amount of such bond shall be 50% higher than the amounts hereinabove specified, and all personal sureties shall justify as prescribed in section 19 of this act.'

This Section, in our opinion, is controlling because of its later enactment and specific coverage of the subject matter, ( **State v. Valdez**, 59 N.M. 112, 279 P. 2d 868).

Therefore, except in cases involving personal sureties, the bond of the municipal treasurer should be in a sum equal to 20% of the public monies received by such treasurer during the preceding fiscal year, with a maximum of \$ 50,000.

Section 14-17-1, N.M.S.A., 1953 Comp. provides that the council of the municipal corporation shall require from such officers as they deem proper, a bond for the faithful discharge of the duties of their office. Since the council may require a bond from a city clerk, we feel that where the jobs of clerk and treasurer are combined, the council may require a bond from that individual over and above the amount required by statute for

his duties as treasurer. In absence of an ordinance requiring a bond for the clerk, however, no additional bonding is required.

It should be pointed out that, according to Attorney General's Opinion No. 57-315, if the clerk is to be bonded, the city should, by ordinance, define his duties and responsibilities regarding any property within his control in order to provide protection for the municipality on his bond covering such property. As noted in that opinion, ordinarily the city council is vested with the management and control of all of the property, real and personal, belonging to the corporation (Sec. 14 - 15 - 7, N.M.S.A., 1953 Comp.). The amount of bond required would, of course, be discretionary with the council.

As to the question regarding surety bonds for the elective council, we can find no such requirement. Section 14-17-1, quoted above, states that the council shall require, from such officers other than the treasurer as they may think proper, a bond. The same section requires that the elective officers take an oath, but does not require a bond.

The fact that the city treasurer handles funds derived from special revenue bond or general obligation bond issues has no bearing upon the type of bond required of that official. Section 14-18-2, N.M.S.A., 1953 Comp. requires that the treasurer "shall receive all monies belonging to the corporation" and we find nothing in the statutory provisions regarding bond issues which would indicate that the surety bond prescribed by Sec. 11-2-36, N.M.S.A., 1953 Comp. is not meant to protect all municipal funds from whatsoever source, handled by the treasurer.