

Opinion No. 61-33

April 26, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Carl P. Dunifon, Assistant Attorney General

TO: Mr. R. F. Apodaca, Superintendent of Insurance, Santa Fe, New Mexico

QUESTION

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1. Can a blanket position surety bond be written to meet the statutory bond requirements of the several County officials of a particular county in lieu of individual surety bonds by each of said County officials?

CONCLUSION

1. No.

OPINION

ANALYSIS

So far as the State of New Mexico is concerned, the problem presented by the query posed herein is a matter of first impression. Our Constitution, case law and statutes furnish little or no information which will assist us in solving the instant problem.

From our research it would appear that only one case has been decided by the Courts of a sister state wherein the facts and statutes involved are analogous to those presented herein. This case will be discussed in detail and at length later in this opinion.

Our search of the encyclopedias fails to disclose even the mention of the words blanket bond. It would seem that in line with the advent of group insurance policies providing **blanket** insurance coverage for groups of people has also come the idea of **blanket** surety bonds. **Blanket** surety bonds have been written for such a comparatively short time that litigation in regard thereto has not been had, hence the paucity of authority for use in this opinion.

No doubt the idea of a **blanket** bond quite naturally has an appeal to economy minded officials charged with providing the funds for payment of bond premiums. The idea also apparently has an appeal to companies engaged in the sale of surety bonds. Doubtless it is easier and takes less time and effort on the overall, for an agent to negotiate the sale of a **blanket** bond instead of a number of individual bonds.

Be that as it may, we are constrained to voice the comment that it is surprising that the bonding companies themselves, who are represented in the aggregate by eminent legal counsel, have not seen fit to initiate legislation which would make it legally possible for the County officials of our several counties to purchase **blanket** bonds rather than individual bonds.

At first blush, it might seem that **why not a blanket bond** rather than individual bonds? A perusal of the statutes pertaining to bonds required to be given by our several county officials makes it evident that blanket bonds will not legally suffice. New Mexico **county official** bond statutes are:

PROBATE JUDGE -- originally enacted 1887:

16-4-3, N.M.S.A., 1953 Compilation -- "The probate judges of the several counties of this state shall be required to execute and enter into a good and sufficient bond to the State of New Mexico in the penal sum of Five Hundred Dollars (\$ 500) each, with sufficient surety or sureties, to be approved by the Judge of the District Court of their respective counties, conditioned for the faithful performance of the duties required of them by law."

COUNTY COMMISSIONERS -- originally enacted 1887:

15-37-6, N.M.S.A., 1953 Compilation -- "All county commissioners of the several counties of this state shall be required to execute and enter into a good and sufficient bond to the State of New Mexico in the penal sum of Five Thousand Dollars (\$ 5,000) each, with two (2) or more sufficient sureties, to be approved by the Judge of the District Court of their respective counties, conditioned for the faithful performance of the duties required of them by law."

COUNTY CLERK -- originally enacted 1901:

15-39-2, N.M.S.A., 1953 Compilation -- "The county clerk of each county shall, before entering upon the duties of his office and within ten (10) days after the first day of January following his election, execute a bond to the State of New Mexico, in the penal sum of Ten Thousand Dollars (\$ 10,000), with sufficient sureties, to be approved by the Judge of the District Court of said county, conditioned that he will well and faithfully perform all of his duties as such county clerk during his term of office."

The footnote under this section shows that prior to an amendment thereto in 1919, at least "two good and sufficient sureties" were required.

COUNTY SCHOOL SUPERINTENDENT -- originally enacted 1923:

73-5-1 (PS), N.M.S.A., 1953 Compilation -- the pertinent portion of this section reads:

". . . Each county school superintendent shall, before entering upon the discharge of the duties of his office, take and subscribe to the oath or affirmation as provided by law, which oath or affirmation shall be filed at the office of the county clerk. Within thirty (30) days after receiving his certification of election, or appointment, he shall give a bond in the sum of \$ 2,000.00, conditioned on the faithful and impartial discharge of his duties. Said bond shall be approved by the district judge of the district in which the respective county is located, and filed with the county clerk . . ."

COUNTY SHERIFF -- originally enacted 1876:

15-40-3, N.M.S.A., 1953 Compilation -- "Every person elected to the office of sheriff in any county of this state, before he shall be authorized to perform any official duty as such, shall execute and file a bond to the state in a sum to be determined by the judge of the district court of the county in which such person may be elected; and which shall in no case be less than three thousand dollars (\$ 3,000), with at least two (2) sufficient sureties conditioned for the faithful performance of his duties as such sheriff, during the term for which he may be elected and until his successor shall be elected and qualified."

15-40-4, N.M.S.A., 1953 Compilation -- "The bonds hereinbefore provided for shall be subject to the approval of and be approved by the judge of the district court of the county of which the person executing the same shall be sheriff; and the bond given as sheriff shall be filed in the office of the clerk of the district court. Such bonds shall be recorded by said officers in books to be kept for that purpose, and safely preserved in the respective office; and such bonds shall be construed to cover duties imposed by law after the same are given as well as those prescribed by law at the time of the execution of the same."

15-40-5, N.M.S.A., 1953 Compilation -- "Every person elected to the office of **sheriff** as aforesaid, before entering upon the discharge of his duties as such, shall take and subscribe upon the back of his bond, or upon a paper attached thereto, an oath or affirmation that he will support the Constitution of the United States and the laws of this state and that he will faithfully, impartially and to the best of his ability discharge all of the duties of his office. And all deputy sheriffs shall take and subscribe a similar oath, and the sheriff may take bond for the faithful performance of his duties by any deputy."

15-40-6, N.M.S.A., 1953 Compilation -- "Any person who shall enter upon or attempt to execute any official duty as **sheriff** (or as ex-officio collector), without having first executed and filed his official bond and oath of office as above required, shall be deemed guilty of a misdemeanor, and upon conviction in the district court, shall be fined in any sum not exceeding three hundred dollars (\$ 300), in the discretion of the court."

COUNTY SURVEYOR, originally enacted 1891:

15-41-1 ,N.M.S.A., 1953 Compilation -- ". . . Before entering upon the duties of his office he shall take the oath of office required by law of other county officers, and shall enter into bond to the state of New Mexico in the sum of five thousand dollars (\$ 5,000) with

two (2) good and sufficient sureties, to be approved by the board of county commissioners, conditioned for the faithful discharge of the duties of his office."

COUNTY TREASURER, originally enacted 1897:

15-42-3, N.M.S.A., 1953 Compilation -- "The treasurer shall enter into a bond to the county conditioned for the faithful performance of the duties of his office. He shall keep a just account of all moneys received and disbursed, and regular accounts of all warrants drawn on the treasury and paid; and will keep the books, papers and moneys thereto pertaining, ready for inspection of the county commissioners at all times."

15-42-4, N.M.S.A., 1953 Compilation -- "The treasurers of the several counties of this state shall be ex-officio collectors for their respective counties, and shall have and perform all the powers and duties provided by law for county collectors. They shall give bond as such treasurers and ex-officio county collectors, which bond shall be approved by the district judges and the county commissioners of their respective counties."

11-2-36, N.M.S.A., 1953 Compilation -- enacted 1933 -- "Hereafter the official bond to be given by the state treasurer shall be in the sum of five hundred thousand dollars (\$ 500,000); and the official bonds to be given by **county treasurers** shall be not less than the following amounts: Counties of the first class fifty thousand dollars (\$ 50,000), counties of the second class forty thousand dollars (\$ 40,000); counties of the third class thirty thousand dollars (\$ 30,000), counties of the fourth and fifth classes twenty-five thousand dollars (\$ 25,000). Bonds of municipal treasurers and treasurers of any board in control, 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 . . ."

11-2-37, N.M.S.A., 1953 Compilation -- The pertinent portions of this section, exclusive of the form of bond set forth therein read:

"If any state, county, city or town officer or treasurer of any board in control required to give bond by the laws of this state, shall furnish such bond with an authorized surety company as surety thereon, the premium on such bond shall be paid by the state, in the case of state officers, and by the county, city or town in the case of county, city or town officers, and by the board in control in the case of their treasurers. Such bonds shall be in substantially the following form:

(form of bond)

"In event of the giving of bonds with personal sureties the bond shall be substantially in the foregoing form."

COUNTY ASSESSOR -- originally enacted 1921:

15-38-2, N.M.S.A., 1953 Compilation -- "Before assuming the duties of this office, the assessor shall execute a bond to the state in the sum of five thousand (\$ 5,000) dollars with some surety company authorized to do business in the state of New Mexico, as surety thereon, to be approved by the board of county commissioners, conditioned that he shall promptly, faithfully and impartially discharge the duties of his office, and shall also take and subscribe the oath in writing, prescribed by law. The premium on such bond shall be paid by the county on warrant of the county commissioners. Such official bond and oath shall be filed in the office of the county clerk."

A perusal and a comparison, one with the other, of the foregoing statutes presents so many glaring differences as to make impossible the attempt to utilize a **blanket** bond to cover the various ramifications and meet the different requirements of our **individual** bond statutes.

Just a few of the differences are:

Probate Judge "with sufficient surety or sureties".

County Commissioners "two or more sufficient sureties".

County Clerk "with sufficient sureties".

County School Superintendent "a bond" (no mention of sureties).

County Sheriff "in no case to be less than \$ 3,000 with at least two sufficient sureties".

County Surveyor "two good and sufficient sureties".

County Treasurer "give bond as such **treasurers** and ex-officio county collectors", 15-42-4, supra.

COMMENT: This statute does not say to whom bond shall be given. "In event of the giving of a bond shall be substantially in the foregoing form", 11-2-36, supra.

County Assessor "with some surety company authorized to do business in the state of New Mexico."

Most of these statutes provide that the bond run to the **State of New Mexico**. However, one of the sections pertaining to the office of County Treasurer, 15-42-3, supra, authorizes a bond running to the **County**

Approval of bonds by a **District Judge** is provided in the sections covering Probate Judge, County Commissioners, County Clerk, County School Superintendent and County Sheriff.

Approval of bonds by **County Commissioners** is provided in the sections covering County Surveyor and County Assessor.

Approval of a bond of a County Treasurer by **both District Judge and County Commissioners** is provided in 15-42-4, supra.

Bonds of County Superintendent and County Assessor shall be **filed** with the County Clerk.

Bond of the Sheriff shall be filed in the office of the Clerk of the District Court and shall also be recorded.

No designation or provision is made as to **where** the bonds of Probate Judge, County Commissioner, County Clerk, County Treasurer and County Surveyor shall be filed.

Foote v. County of Adams, 80 N.W. 2d., p. 179, 163 Neb. 406, was decided on December 21, 1956. The statement of the case as set forth by Chief Justice Simmons presents the issues in a succinct manner.

Plaintiff Foote is a taxpayer suing for himself and all other taxpayers of Adams County. The defendants are the County of Adams and the seven members of the County Board of Supervisors. Plaintiff seeks to enjoin the county from purchasing and paying for a **blanket** bond from Western Surety Company covering any person elected to county office who is required by statute to furnish an official bond.

Defendants by answer, alleged that the **blanket** bond involved complied with the statutes and furnished complete protection to the County. The trial court held the bond to be good and sufficient and rendered judgment for the defendants.

The bond itself, including rider, is set forth in its entirety in the statement of the case. Attached to the bond are twenty-one separate oaths of office. Of these oaths of office, eleven are shown to be verified on December 24, 1954, and six of the oaths are shown as verified on January 6, 1955. The Court then went into considerable further detail as to the order in which the oaths were attached to the bond, some on one date, some on other dates, and then made the comment:

". . . We mention these things because they illustrate the conditions that are spawned where officials fail to follow the clear provisions of the applicable statutes to which we refer later herein . . ."

The author of the opinion then quoted from **State ex rel Jones v. Clausen**, 78 Wash. 103, 138 P. 653, 654, as follows:

". . . It has been, and it well should be, the policy of the courts in construing statutes to ascertain the intent of the legislative branch of the government. No surer search light can be found than the settled practice of the legislative body, for a habit, if tolerated and

acquiesced in for a period of years by the people, and if it in no way offends against any provision of the Constitution, becomes a quasi custom, and of custom it is said there can be no higher law . . ."

Justice Simmons, author of the Foote decision, *supra*, then stated:

". . . The settled practice of the Legislature for the last 75 years has been to require individual bonds from individual county officials. This is abundantly clear in all analysis of the various statutory provisions . . ."

There is then set forth sections of Nebraska statutes numbering 36, which sections set forth the requirements for the execution, oath, filing and approval of the bonds of the several county officials, their clerks and deputies. This observation is made in the last paragraph, page 185 of the opinion of the Court:

". . . We think it quite patent from the above statutory provisions that the uniform practice of the Legislature over the years has been to require each county official or employee to furnish a bond covering the requirements of his position. He is to execute it as principal. He is to select the surety and have the surety execute the bond. He is to submit it to the approving authority and secure approval. He is to file the bond in the required office or with the required person . . ."

and the second paragraph, page 189:

". . . The defendants suggest that if the bond herein involved is insufficient as to any officer, that a "rider" could be attached to the bond to cover the deficiency. It may be that some of the matters which we have discussed herein could be so handled insofar as fixing liability on the bond is concerned. However, again we find nothing in the statutes that indicates a legislative intent that an official bond is to be draped and encumbered by a series of acceptances, riders, endorsements, oaths of office, approvals, and filings . . ."

The Court further stated in the last paragraph of (2), page 189 of its opinion:

". . . Having clearly and explicitly enacted a complete system of individual official bonds, we see no necessity for the Legislature to negative by direct language an intent to authorize blanket bonds. The negative intent to authorize a blanket bond is inherent in the affirmative authorization of individual bonds."

In paragraphs (3, 4), page 189, the Court stated:

"Accordingly we hold that the statutes requiring official bonds of elected county officers are intended to require individual official bonds. A blanket bond purporting to cover all elected county officers does not meet the standards required by the statutes.

The judgment of the district court is accordingly reversed and the cause remanded with directions to enjoin the county from purchasing and paying for the bond here involved insofar as it purports to be a bond in lieu of the required individual bonds of the elected county officials."

It would be superfluous to go on and on, ad infinitum, as it were, to demonstrate the impossibility of the use of a blanket bond to meet the requirements of our individual bond statutes.

A blanket position surety bond cannot be written to meet the statutory bond requirements of the several county officials of a particular county in lieu of individual surety bonds by each of said county officials.