

Opinion No. 65-187

September 22, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Joel M. Carson, Assistant Attorney General

TO: Mr. Eloy A. Blea, Director, Private Investigator Division, Office of the Attorney General, Santa Fe, New Mexico

QUESTION

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Does the bond required by the Private Investigators Act contemplate a total liability of the surety?

CONCLUSION

Yes.

OPINION

{*305} ANALYSIS

N.M.S.A. 67-33-39 and 67-33-40 provide as follows:

No license shall be issued under this act (67-33-1 to 67-33-49) unless the applicant files with the attorney general **a surety bond executed by a surety company authorized to do business in this state in the sum of two thousand dollars (\$ 2,000.00) conditioned for the faithful and lawful conduct of his business by such applicant.** Such bond, as to its form execution and sufficiency of the surety, shall be {*306} approved by the attorney general. (Emphasis supplied.)

The bond required by this act (67-33-1 to 67-33-49) shall be taken in the name of the people of this state and every person injured by the willful, malicious or wrongful act of the principal may bring an action on the bond in his own name to recover damages suffered by reason of such willful, malicious or wrongful act.

Each license under the Private Investigators Act is required to have on file with the Office of the Attorney General a surety bond in the amount of \$ 2,000.00 to insure the faithful and lawful conduct of the licensee. The bond must be in a form approved by the Attorney General and must be made payable to people of the State of New Mexico. We are now asked to determine whether section 67-33-39 places a total limitation on the liability of the surety for the defalcations of the licensee. We believe that the face amount of the bond filed with the Attorney General represents the total liability of the

surety regardless of the number of claims which may be filed against the licensee. In a suit on a statutory bond the limitation of the liability of the surety is the face amount of the bond, **Locke v. Beale**, 257 S.W. 302 (1923), **Herbert v. Herwitz Mintz Co.**, 21 So. 2d 638 (1945). In Appleman **Insurance Law and Practice**, Section 6354, Appleman states that it is a general rule that recovery cannot be allowed against a surety in excess of the maximum amount set forth in the bond. The face amount of the bond is the maximum limit of the surety's liability regardless of the number of suits filed or claims made under the bond. Thus if five claims are filed against a licensee for \$ 2,000.00 each, the surety is liable only for a total amount of \$ 2,000.00.