

Opinion No. 15-1591

July 21, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Jacobo Chaves, Superintendent of Insurance, Santa Fe, New Mexico.

As to whether the deposit of \$ 20,000.00 required of surety companies refers only to such companies writing official bonds.

OPINION

{*165} I have your letter asking me to advise you if in my opinion Section 1 of Chapter 87 of the Laws of 1913 requires surety companies writing bonds of any character in this state to make the deposit of \$ 20,000.00 as stated therein, or whether this refers only to such companies writing what is known as official bonds.

The section about which you ask is an amendment to Section 1 of Chapter 122 of the Laws of 1909. As originally adopted in 1909 it referred only to the giving of bonds by public officers, and was as follows:

"That hereafter no bonds given by any officers of this Territory, or of any county, city or municipality thereof, and executed by any incorporated company as surety for any public officer shall be approved or accepted unless the surety company executing the same shall in addition to the other qualifications now provided by law authorizing such companies to do business in this Territory, have deposited with the Territory of New Mexico before the execution of such bond, the sum of ten thousand dollars in lawful money of the United States or bonds issued by the Territory of New Mexico, or some county, city or municipality thereof of the par value of not less than ten thousand dollars, and which said bonds so deposited shall be approved by the said Territorial Treasurer as being of an actual market value of at least equal to their par value, all of which said money or bonds so deposited, shall be held by the said treasurer in trust for the benefit and security of the holder of the bonds and obligation of the said surety company."

As amended in 1913 that section is made to read as follows:

"Hereafter no incorporated surety company shall do business in this state unless it shall have first deposited with the state treasurer the sum of \$ 20,000.00 of lawful money of the United States in bonds or other securities of the par {*166} value of not less than \$ 20,000, which said bonds or other securities so deposited shall be approved by the said state treasurer as being of an actual market value at least equal to their par value, all of which said money, bonds, or other securities so deposited shall be held by the said state treasurer in trust for the security of the holders of the bonds and obligations of the said security company."

By comparing the two sections it will be seen that the first one requires a deposit of not less than ten thousand dollars from companies executing bonds for public officers, while the latter section refers to all incorporated surety companies doing business in the state. Were there nothing further to be considered I would say that beyond doubt the later statute required every incorporated surety company to make the deposit of twenty thousand dollars, no matter what kind of bonds or obligations might be executed by the company, but the provision to be found in Section 16 of Article IV of the Constitution that:

"The subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed, except general appropriation bills and bills for the codification or revision of the laws,"

considered in connection with the title of Chapter 87 of the Laws of 1913, is calculated to cast some doubt upon the validity of that statute. Its title is:

"An act to amend Sections 1 and 3 of Chapter 122 of the acts of the 38th legislative assembly of the Territory of New Mexico, entitled "An Act to provide for the furnishing of proper bonds by territorial, county and municipal officers, and for other purposes, approved March 18, 1909, and to repeal Section 1538 of the Compiled Laws of New Mexico of 1897."

It is true that this title distinctly calls attention to the fact that the act is to amend Sections 1 and 3 of the act of 1909, but there is nothing in the title to indicate a legislative purpose to go beyond the scope of the title of the Act of 1909 which, properly construed, relates only to the furnishing of bonds by territorial, county and municipal officers, although it is true that in 1909 we had no constitutional limitation as to what must be expressed in the title of an act. The object of the constitutional provision is, of course, to avoid, as far as practicable, the inadvertent passage of legislation not indicated by the title, which, if it had been so indicated, might never be adopted. It might be argued that there is nothing in the title of this act to indicate an intention to legislate on the subject of requirements imposed upon surety companies, and while I will not predict with any confidence what view might be taken of this objection by the courts, yet I believe there is enough doubt on this subject to make it highly desirable to obtain a judicial decision, and I trust that some way will be found to get the question in court.