

Opinion No. 16-1899

November 9, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Alfred Grunsfeld, Albuquerque, New Mexico.

County commissioners cannot designate a particular surety company which alone can execute bonds of county officers.

OPINION

{*444} I have your letter of yesterday in which you ask me whether or not the board of county commissioners has a right to designate the surety company by which county officials shall be bonded, or if the {*445} county officials have the right to select their own bonding companies.

The only thing to be found in the statutes which can have caused you to ask this question, is to be found in Section 18 of Chapter 57 of the laws of 1915. That section provides that if any county officer required to give bond by the laws of the state, shall furnish such bond with an authorized surety company as surety thereon, the premium on such bond shall be paid by the county, and it might, at first glance, appear that the county board which pays the premium should have some voice in selecting the company to which the premium shall be paid. I do not think, however, that this would be a proper construction of this section, which merely provides that if the officer furnishes a surety company bond, then the county shall pay the premium. It does not require that the bond shall be signed by a surety company, but, in effect, merely provides that if it is so signed, then the premium must be paid by the county.

The bonds of the sheriff, county clerk, county commissioners, probate judge and treasurer of the county road board, are to be approved by the district judge, as you will see by reference to Sections 1248, 1441, 1193 and 2646 of the Codification of the statutes. If these officers should furnish surety company bonds which are approved by the district judge, I do not see how the board of county commissioners could refuse to pay the premium, no matter what company might have executed the bonds.

The bonds of the surveyor, assessor and superintendent of schools are to be approved by the county commissioners, as will appear from Sections 1285, 1237 and 4838 of the Codification. The county commissioners might refuse to approve a bond, but I am sure that they would not have lawful authority to do so except for some good reason. If a surety company had defaulted in the payment of bonds or had unreasonably resisted the payment of bonds, that might furnish a reason for disapproval. For instance, the Southwestern Surety Insurance Company has made prolonged and irritating resistance to the payment of the bond which it gave for the treasurer of the Agricultural College, and as far as any business with the State is concerned, I think everyone here decided

never to accept a bond from that company. Later that company was consolidated and merged with the Southern Surety Company, which last named company took over the liabilities of the first company but has not as yet made any settlement. I would not be willing that the State should accept any bond of that Southern Company but think it should be put on what is commonly called a black list. If the board of county commissioners should refuse to approve any bond offered without some such good reason, I believe that the district court would compel the approval by mandamus.

There appears to be no provision of law as to the approval of the county treasurer's bond.

There is nothing in any of the sections above cited which requires or directly authorizes the giving of a surety company bond. In the case of the sheriff, clerk and surveyor, the statutes require a bond with two sureties, and in case of the county commissioners, probate judge and assessor, it is required that there shall be two or more sureties. If these sections stood alone it would be difficult to say {**446*} that a surety company bond without another surety, is authorized at all, but it is my opinion that Section 18 of Chapter 57 of the Laws of 1915, in effect, gives permission to county officers to give a surety company bond.

In the case of the superintendent of schools and the treasurer of county road boards, no mention is made of sureties.

It seems, therefore, that these various officers might give bonds with individual sureties. If they should choose to do so and such sureties were found to be sufficient, the county commissioners or the district judge would approve the bonds.

I am unable to see how the county commissioners can designate any particular company or companies which alone would be approved on such bonds.