

Opinion No. 20-2737

November 29, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Messrs. Hall & Wiley, Santa Fe, New Mexico.

No Separate Official Bond Required of County Treasurer for Duties as Treasurer of Irrigation District.

OPINION

Referring to the letter of F. E. Brisbine, Manager of the American Surety Company, of Denver, under date of November 18th, in regard to bonds of County Treasurers acting as collectors and custodians of irrigation district funds, upon which you requested an opinion from this office, we wish to advise you as follows:

Section 17, Chapter 57, Laws 1915, provides that the official bond to be given by the State Treasurer and all County and Municipal Treasurers shall be in a sum equal to 35 per cent of the public moneys received by such Treasurers during the preceding fiscal year.

This is the official bond required by law of the County Treasurer.

Section 21, Chapter 41, Laws 1919, provides that the County Treasurer of the county in which is located the office of any irrigation district, "shall be and is hereby constituted ex-officio district treasurer of said district and said County Treasurer shall be liable upon his official bond," etc.

It is clear that no additional bond other than the official bond required by law is demanded of County Treasurers for the performance of their duties as ex-officio Treasurers of irrigation districts.

It is a fundamental proposition of law that no bond can be required of an official unless specifically provided for by statute.

There being no statutory requirement for a bond for the faithful performance of his duties as ex-officio Treasurer of irrigation districts, in our opinion, no separate bond can be so demanded.

Of course there would be no objection to the furnishing of a separate bond in the event that the Treasurer desired to furnish one.

In our opinion, this office has no discretion in a matter of that kind. We are simply required to construe and interpret the law as it appears in the statute books.

We are returning herewith the letter from Mr. Brisbane.