Opinion No. 40-3417

February 1, 1940

BY: FILO M. SEDILLO, Attorney General

TO: Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico.

*{*137}* In your letter of January 30 you state that bonding companies are requiring that deputy county treasurers as well as the county treasurer furnish a bond, and you inquire whether the county should pay for the premium of the deputy's bond.

Sections 33-4503 and 33-4504, New Mexico Statutes, Annotated, 1929 Compilation, and Section 1 of Chapter 36, Session Laws of 1933, provide only for the bonding of the county treasurer, and I find no statute requiring that deputy treasurers be bonded. See also Section 112-117, New Mexico Statutes, Annotated, 1929 Compilation, dealing with the payment of premiums on official treasurer's bonds, and see also Chapter 57, New Mexico Session Laws of 1939.

In your letter you say that it is the bonding company that requires this additional deputy's bond. Apparently, therefore, this supplemental bond is for the benefit and protection of the bonding company and not the state or county, and if this is so, I fail to see why the county should pay the premium.

Insofar as the state and county are concerned, they are protected by virtue of the treasurer's bond, and the premium for any additional deputy's bond for the protection of either the treasurer personally or the bonding company should not be paid for by the county.

In other words, it appears that in view of the fact that the state and county are protected on the treasurer's bond for any defalcation even by a deputy, that the bonding company desires to have this possible liability on their part covered by the treasurer's bond underwritten by an additional bond on the deputy. This, no doubt, is good business policy for the bonding company that is surety for the treasurer, and no doubt, is good business policy for a treasurer to require his deputy to be bonded under him for his own protection, but I do not believe the county should pay for this additional protection to the treasurer or the bonding company. It certainly does not benefit the state or county in any way if the official treasurer's bond is otherwise sufficient.

As a matter of fact, this state is very liberal with bonding companies. On the other hand, as the records of your office will disclose, a practice has grown up among some bonding companies to resist to the last ditch any liability owed to the state or county on official bonds regardless of what the facts may be in any specific case. Actually, legislation should be recommended to the Legislature requiring surety companies that want state and county business to agree to pay off whenever liability is clearly established by a group of impartial auditors; or at least some procedure of taking summary judgment should be initiated.

Since, therefore, the state and county is protected by the bond of the county treasurer proper, and since I find no statutory requirement for a deputy treasurer's bond, and since, as stated in your letter, it is the bonding company and not a county or state agency that requires the additional deputy's bond, I fail to see why the county should pay the premium thereon.

By: FRED J. FEDERICI,

Asst. Atty. Gen.