

BONDS:

Attorneys may not be sureties on official bonds.

COLLECTOR OF REVENUE:

January 5, 1951

1-6-51

Honorable G. H. Bates
Director
Department of Revenue
Jefferson City, Missouri



Dear Mr. Bates:

This is in reply to your request for an opinion which we re-state as follows:

"Should the Director of Revenue approve the official bond of a County Collector of Revenue when two of the sureties on the bond are attorneys at law?"

In Laws of Missouri, 1943, Section 11056, page 1062, is found the statutory provision for the requirement of a bond for Collectors of Revenue, which provides that: "The official bond required by this section shall be signed by at least five solvent sureties."

Laws of Missouri, 1945, Section 11062, page 1820, provides for approval of a collector's bond by the Director of Revenue, and reads, in part, as follows:

"The collector's bond, when received by the director of revenue, shall be carefully examined, and if found to be made in conformity to law, and the sureties satisfactory, the said director of revenue shall file the same with the Secretary of State, and immediately certify the fact thereof to the clerk of the county court; but if said director of revenue finds said bond to be not in accordance with law,

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or if it has reason to doubt the sufficiency of the security, it shall immediately return the bond to the clerk of the county court, who shall notify the collector to correct said bond, or make a new bond, as may be required by the director of revenue. * * * ."

From the above it is seen that if the Director of Revenue finds that the said bond is not in accordance with law he shall immediately return the bond to the clerk of the county court and require a bond which is in accordance with law.

Section 3234, R.S. Mo. 1939, provides:

"No sheriff, collector, constable, county treasurer, attorney at law, clerk of any court of record, judge or justice of any court of record, shall be taken as surety in any official bond that may be given by any officer in this state."

Section 3234 was held to be directory in the case of State ex rel. Howell County vs. Findley, 101 Mo. 368. However, directory provisions of a law are not intended by the Legislature to be disregarded. (State vs. Consolidated School District #40, 217 S.W. (2d) 500, 502).

Since Section 3234, supra, clearly prohibits an attorney at law from becoming a surety in an official bond the Director of Revenue has no alternative but to find that said bond is not in accordance with the law, and under the provisions found in Laws of Missouri, 1945, page 1820, supra, he is under a duty to return the bond to the clerk of the county court for the making of a new bond in accordance with law.

CONCLUSION.

Therefore, it is the opinion of this department that an attorney at law may not be taken as surety in

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any official bond that may be given by any officer in this State, and that a bond which has been furnished with an attorney at law as surety may not be approved.

Respectfully submitted,

JOHN R. BATY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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