

MAINE STATE LEGISLATURE

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April 10, 1942

To the Attorney General
Re: Proposed Bonding Law

We have studied the proposed draft of a bonding law, submitted by the Reviser of Statutes, together with your memorandum.

In our opinion the objectives in bonding State officials and employees in their relative importance are to secure: (1) accountability for State funds; (2) accountability for State property; and (3) the faithful performance or discharge of the duties of the office or employment.

(1) "Faithful Performance Bonds. In general we do not consider the "faithful performance" bond of value to the State. Employees as distinct from State officers have, as we see it, no official duties to which "faithful performance" attaches. Members of Commissions, such the Public Utilities, Liquor, and State Highway, and officers such as the Forest Commissioner and the Commissioners of Agriculture and Education perform many administrative and, in a sense, judicial duties. "Faithful performance" does not attach to acts of either type.

Only in cases wherein the State may reasonably be said to have a claim for damages from failure to perform statutory duties does the "faithful performance" bond appear to be of benefit to the State.

We have noted that many of the officers by statute are required to give bonds of this type.*

We recommend further consideration to ascertain if, in fact, the State gains any appreciable protection from such bonds which would not otherwise come from bonds to account for money or in some instances property.

The State Treasurer gives a "faithful performance" bond under the Constitution and the supporting legislation. The proposed draft does not affect this situation, nor does it appear that the proposed draft affects bonds of sheriffs and other officers of like type.

Care should be taken that a general law intended primarily to meet the needs of the State administration does not change, in any unintended manner, bonds of officials such as sheriffs.

It will be noted that a sheriff, for example, gives bond to protect the public as well as the State. Such protection, in our view, for the public is not desirable in the case of State officers.

(2) Properly Account for Money Bonds. This type of bond, in our opinion, is best suited for the protection of the State. The language of Revised Statutes Chapter 125, Section 56 is well suited as a basis for a more inclusive statute. All officers and employees handling public moneys should, no doubt, give such a bond.

* There is considerable material on this subject in Treasury files, "State vs. Belmont Smith" and "Surety Bonds". H.C.

"Faithful performance" is a concept difficult to define. It includes, of course, accountability for money. Failure to "properly account" appears on audit.

(3) Properly Account for Property Bonds. Such bonds do not appear to be of great value. Customary business practices should provide reasonable control and prevent substantial losses.

In the event such protection is desired, we suggest and consider:

- A. A bond of the type directed in Revised Statutes Chapter 18, Section 16 relating to the safekeeping and proper disposition of federal property; and
- B. That such bonds be limited to a percentage of the value of the property likely to be in the individual's hands as determined by the auditor.

Care should be taken not to include within the scope of the legislation mandatory requirements of bonds from the Governor, Judges, the Attorney General, and officers of a like type. Nor, in our opinion, should there be permissive requirements for bonds from such officers.

Miscellaneous.

We recommend:

(1) Uniformity in the statutes; for example, "faithful performance" and "faithful discharge" have one and the same meaning and one or the other term should be used. The Commissioner of Education gives simply a "surety bond" R. S. Chapter 19, Section 161. See also the varying provisions for bonds for State Boards of Examiners.

(2) That where "faithful performance" bonds are required, the provisions therefor be spelled out with respect to each office as in the present Revised Statutes. It is of some convenience, as we see it, to have all of the statutes relating to an office found in one part of the statute book.

(3) That the bonds run to the State. We see no advantage in having the bonds run to the officer as provided in the proposed draft. In such case it would protect the State only in the event the officer was himself responsible for the acts of the bonded employee. Whereas if the bond of the employee runs to the State this question would not arise.

We further suggest for consideration that under the proposed draft broad and sweeping powers are given to the Governor and Council. Should the amount of the bond of officers elected by the Legislature be determined by the Executive? Should the Legislature set no limit for the amount of bonds? These are among the questions which will readily occur in testing the advisability of transferring to the Executive such powers.

The proposed draft, it seems to us, is a laudable attempt to simplify the structure of the bond law. We believe, however, that as drawn it might well give rise to additional and troublesome questions.

We were asked by the Reviser whether, in our opinion, the draft is advisable legislation. Our answer is "no" for the reasons stated.

Comment on the phraseology of the draft as requested by the Reviser by us would not, as we see it, be helpful in view of our opinion upon the draft as a whole. We do note, however, that "faithfully perform the duties of his office" or "properly account for State moneys" or "property" would give the protection desired as adequately as the more extended phrases in the draft. The inclusion of many situations wherein the bond would apply might lead to the construction that other situations covered by a more general phrase were not intended to be included.

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Robert B. Williamson