

MAINE STATE LEGISLATURE

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March 9, 1976

H. W. McKowen, Executive Secretary

Maine Insurance Advisory Board

S. Kirk Studstrup, Assistant

Attorney General

Bail Commissioners

Your memorandum of February 24, 1976, and its enclosures, raises the question of whether bail commissioners are covered under the State of Maine Blanket Bond issued by the Maine Bonding and Casualty Company. It is our understanding that this concern stems from the possibility that bail security being held by a bail commissioner could be stolen or otherwise lost. The answer to your question is negative.

The Blanket Bond provides coverage for loss of securities held by the State as bailee, trustee, or custodian while they are ". . . actually within any premises of the Insured [the State] or is within any recognized place of safe deposit, or is . . . in the custody of one of the Employees" Bail security held by a bail commissioner is to ensure that the accused will make himself available for judicial proceedings. It is returned if all conditions are fulfilled or forfeited to the State if they are not. Therefore, unless and until the accused breaches the conditions of his bail, the bail security is held by the State as bailee, trustee or custodian. The most important consideration for a bail commissioner would be possible losses occurring while the commissioner holds the bail security at his home or place of business. Coverage under the Blanket Bond in these circumstances would depend on whether a bail commissioner is considered an "employee" of the State for these purposes.

The term "employees" is defined in the Blanket Bond as ". . . any official or employee, but not to mean brokers, factors, commission merchants, consignees or other agents or representatives, or any person not in the direct employ of the [State]." Bail commissioners are appointed by the Superior Court or a Justice of the Supreme Judicial Court, and hold office during the pleasure of the Superior Court. 14 M.R.S.A. § 5541. They are subordinate officers of the court exercising those powers which are conferred on them (14 M.R.S.A. § 5542) - and, as such, may be considered to this limited extent officers of the State. However, a bail commissioner cannot be considered to be in the direct employ of the State. Bail commissioners are in neither the classified nor unclassified service of the State. 5 M.R.S.A. §§ 671 and 711. Furthermore, traditional definitions of employment place emphasis on reimbursement for services performed and control of the performance and result of the services. Black's Law Dictionary. Reimbursement for bail commissioners is set by statute and is in the form of a fee charged for each time they take bail. 14 M.R.S.A. § 5542.

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This fee is collected from the accused, not the State. Furthermore, while the duties and powers of bail commissioners are specified and limited by statute, the commissioners typically do not receive on-going supervision in the performance of these duties. The position of bail commissioners vis-a-vis the State could be more closely analogized to the position of an independent contractor than that of an employee.

A bail commissioner is not a person in the direct employ of the State, for the reasons stated above. Therefore, it is our opinion that bail commissioners are not covered by the State's Blanket Bond, as presently written, against loss of bail securities while held at the commissioner's home or place of business. This opinion conforms with your indication that risks of this sort were not considered in calculating the premium for the present bond.

S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe