

1953 O. A. G.

OFFICIAL OPINION NO. 83

October 6, 1953.

Hon. B. Groesbeck, Jr., M. D.,
Director, Department of Health,
1330 West Michigan Street,
Indianapolis, Indiana.

Dear Sir:

I have your letter of July 8, 1953, which reads in part as follows:

“The Health Administration Act of 1953, being Chapter 197 of the Acts of 1953, provides in Section 713 for the bonding of certain employees of the Department of Health. Two questions have arisen in connection with 713 and your opinion in these matters is respectfully requested.

“The first question is: Is it the intent of Section 713 that the Director himself be bonded? The second question is: Does the qualified phrase, ‘conditioned on the faithful performance of his duties,’ require a bond of the faithful performance type or may the requirement be satisfied with a dishonesty type of bond?”

Section 713 of Chapter 197 of the Acts of 1953 as found in Burns’ Indiana Statutes Annotated (1951 Repl., 1953 Supp.), Section 60-2063 reads as follows:

“Each Superintendent and any officer or employee of the Department of Health, or of any division, agency or institution thereof, as the Director may require, shall furnish a bond in such amount as the Director may determine, payable to the State of Indiana conditioned on the faithful performance of his duties. Such bonds shall be subject to the approval of the Insurance Commissioner, and shall be filed in the office of the Secretary of State. The premiums for such bonds shall be payable from department funds, and the Director, at his election, may procure a standard form blanket bond covering all or any part of the officers and employees of the department, providing such blanket bond shall be in an amount not less than fifty thousand dollars (\$50,000.00).”

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Section 205 of Chapter 197 of the Acts of the General Assembly of 1953 as found in Burns' Indiana Statutes Annotated (1951 Repl., 1953 Supp.), Section 60-2025 provides that the superintendent of the institutions mentioned therein shall have the powers, duties and qualifications now provided by law. Section 503 of Chapter 197, *supra*, as found in Burns' Indiana Statutes Annotated (1951 Repl., 1953 Supp.), Section 60-2043 contains a similar provision in regard to the institutions mentioned in that section. This refers back to Chapter 38 of the Acts of the General Assembly of 1941 as found in Burns' Indiana Statutes Annotated (1950 Repl.), Section 22-123 *et seq.* which in turn refers to other prior laws. We have examined such laws and find no provision for bonds of officers except for the treasurer of the respective boards of trustees and for certain of the institution superintendents. In my opinion the bonds of officers and employees are controlled by the section above quoted. This section recognizes the distinction between an individual faithful performance bond and a blanket bond. Under said Section 713 of Chapter 197, *supra*, three classifications are made:

"1. Each superintendent shall furnish a faithful performance bond in the penal amount determined by the Director.

"2. Any officer or employee of the Department of Health, or of any division, agency or institution thereof required by the Director to furnish a faithful performance bond is required to do so in the penal amount determined by the Director.

"3. The Director at his election may procure a standard form blanket bond covering all or any part of the officers and employees of the department provided such blanket bond shall be in an amount not less than fifty thousand dollars (\$50,000.00)."

As to class one: The statute requiring a faithful performance bond is read into any bond covering such superintendent or superintendents whether written into such bond or not, and constitutes the contract upon which the rights and the liabilities of the surety are to be determined.

United States Fidelity and Guaranty Company *et al.*
v. Poetker, Receiver (1913), 180 Ind. 255, 102 N.
E. 372;

Southern Surety Company v. Kinney (1920), 74 Ind.
App. 205, 127 N. E. 575;

Hack v. American Surety Company of New York
(1938), 96 F. (2d) 939.

Consequently, only faithful performance bonds may be used for said superintendents and even if different wording should be used in a bond, it would become, by operation of law, a faithful performance bond.

Section 852 of Chapter 38 of the Acts of the General Assembly of 1881 (Spec. Sess.) as found in Burns' Indiana Statutes Annotated (1948 Repl.), Section 3-2512, and authorities above cited.

As to class two: Such officers and employees as may be required by the Director to give a faithful performance bond are required to do so, and such bonds would then come within the requirements and rules relating to class one, above.

Class three: Officers and employees not required by statute or by the Director to give a faithful performance bond may be covered by a standard form blanket bond. A standard form blanket bond is well understood in the surety field and is different from an official statutory faithful performance bond, and is expressly authorized by Chapter 197, *supra*. A blanket bond may be obtained for these officers and employees and it need not necessarily be a faithful performance blanket bond.

As to your first question, the statute does not require the Director to give bond. However, there is nothing to prevent him from requiring himself to give an individual bond or being included in the coverage of a blanket bond.

What is said here as to said Section 713 of Chapter 197, *supra*, does not apply to the State Board of Health, the Secretary of the State Board of Health or the Stream Pollution Control Board as Section 401 of said Chapter as found in Burns' Indiana Statutes Annotated (1951 Repl., 1953 Supp.), Section 60-2031 expressly provides:

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“* * * the powers, duties and authorities of said boards and said officers *shall not be affected in any manner by the provisions of this act.*” (Our emphasis.)

Consequently, they are not affected by Section 713 of said Act, *supra*, but are controlled by the laws relating to said boards and officers, and Chapter 263 of the Acts of the General Assembly of 1953 as found in Burns' Indiana Statutes Annotated (1951 Repl., 1953 Supp.), Sections 49-143 and 49-144.

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October 7, 1953.

Hon. Harold W. Handley,
Lieutenant Governor of Indiana,
331 State House,
Indianapolis, Indiana.

Dear Mr. Handley:

This is in reply to your letter of September 15, 1953, which is as follows:

“A question has arisen relative to the interpretation of the new State Fair Board Law, namely Senate Enrolled Act Number 160.

“We would appreciate if you could obtain for us, at your earliest convenience, (1) an opinion as to the date of our annual reorganization meeting, which this year would fall on Wednesday, November 11th—a legal holiday; and (2) an opinion as to whether the current offices appointed by the Governor and due to expire this year, would terminate November 1, 1953 or December 31, 1953.

“Your early attention to this matter will be appreciated.”

Section 5 of the Acts of the General Assembly of 1947, Chapter 214, as amended by the Acts of the General Assembly of 1953, Chapter 86 as found in Burns' Indiana Statutes Annotated (1950 Repl., 1953 Supp.), Section 15-220 provides: