

1970 O. A. G.

OFFICIAL OPINION NO. 4

April 8, 1970

Hon. Frank J. Biddinger  
311 Marion National Bank Building  
Marion, Indiana 46952

Dear Senator Biddinger:

This is in reply to your request for a clarification of the language of the Acts of 1969, Ch. 241, Sec. 7, which amends the Acts of 1961, Ch. 263, as found in Burns' (1969 Supp.), Section 9-3733b.

ANALYSIS

Your question concerns the period of time in which a bondsman must produce a defendant after forfeiture on the bond before judgment is taken against the defendant. Your question concerns the emphasized part of that statute which reads, in part, as follows:

"In case the defendant shall not appear as provided in the bond, the court shall thereupon declare the bond forfeited and the clerk shall mail notice of such forfeiture to the addresses indicated in the bonds, and if the bondsmen do not produce the defendant or prove that the appearance of the defendant was prevented by illness, or by the death of a defendant, or the trial defendant was being held in custody of the United States, a state or a political subdivision thereof, *or if required notice was not given within one-hundred eighty [180] days after such mailing* and pay all costs and satisfy the court that defendant's absence was not with the consent or connivance of the sureties, the court shall at once enter judgment, without pleadings and without change of judge or change of venue, against the bondsmen for the amount of the bond and the clerk shall at once record the judgment. Any proceedings relative to said bond, or its forfeiture, judgment, execution of judgment or stay of proceedings shall be in the court in which the bond was posted."  
(My emphasis)

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If defendant does not appear as provided in the bond, the court shall declare the bond forfeited, and the clerk shall mail notice of such forfeiture to the bondsman.

Then within 180 days *after such mailing by the clerk*, the bondsman must either (1) produce the defendant to the court, or (2) notify the court and prove that defendant is too ill to appear in court, is dead, or in jail, or awaiting trial elsewhere in the United States.

In addition to producing the defendant or notifying the court and proving one of the above reasons, the bondsman must also prove that the defendant's absence was not with the consent or connivance of the bondsman, and pay all costs.

## CONCLUSION

Upon failure to comply with the above requirements, the court shall, after 180 days, enter judgment against the bondsman upon that forfeiture. The language of the law is mandatory.