

plus until they have been appropriately transferred to reflect an increase in the stated value of the capital stock account. Accordingly, such a valuation, being a fixed amount, is absolutely compatible with the concept that the 10% limitation is a legislative yardstick that is constant, by which the commission can readily measure its jurisdiction.

Conversely, book value, as opposed to stated value, fluctuates with the acquisition, sale and depreciation of assets, as well as the everchanging fair market value thereof. Thus, capital stock based upon book value of shares would be contrary in every respect to the concept of capital stock developed herein, as related to the jurisdictional standard set out in Section 92.

In summary then, it is my opinion, that the consideration paid, or to be paid, for all shares of stock, regardless of class, authorized to be issued, including those amounts subsequently transferred from surplus to the capital stock account pursuant to applicable provisions of the law under which the utility is organized, constitutes the capital stock of a utility within the meaning of that portion of Section 92 quoted from your letter; it is my further opinion that surplus, in any form, unless transferred as hereinabove provided, should be excluded therefrom.

Finally, it is my opinion that in arriving at a capital stock figure, par stock should be taken at par value, and no par stock at stated value, as such stated value may be increased through appropriate transfers from surplus; except where stock is sold at a discount it should be valued at the amount actually received therefor.

OFFICIAL OPINION NO. 51

November 8, 1963

Mr. B. B. McDonald
State Examiner
State Board of Accounts
912 State Office Building
Indianapolis, Indiana

Dear Mr. McDonald:

This is in response to your letter concerning Sections 3 and

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3a of the County Hospital Act, Acts of 1917, Ch. 144, as last amended by the Acts of 1963, Ch. 361.

The 1963 amendment to Section 3, Burns' (1963 Supp.), Section 22-3218, added the following language:

“* * * Premium on bonds required by this paragraph may be paid out of public funds, and the bond may be a *blanket corporate surety bond* * * *.” (Our emphasis)

The 1963 amendment also added a new Section 3a, Burns' (1963 Supp.), Section 22-3218b, to the Act which now permits the hospital board of trustees to elect a treasurer of their own with the approval of the board of county commissioners. Your questions, based upon these two sections of the 1917 County Hospital Act, are as follows:

- “1. Are 1917 hospitals operating pursuant to Section 3 of this Act, Burns' 22-3218, required to secure approval from this department for blanket bonds?
- “2. Are 1917 hospitals operating pursuant to Section 3a of this Act, Burns' 22-3218b, required to secure approval of the county commissioners and this department for all individual and blanket bonds that may be required?”

The following statutes are pertinent to your first question: The Acts of 1953, Ch. 263, Sec. 1, as found in Burns' (1963 Supp.), Section 49-143, which provides:

“Whenever it is deemed necessary to bond any deputy or employee of any department or agency of the state or of a county, township, city, town school city, school town or school district or any agency, institution, subdivision or department thereof, the administrative officer or governing body thereof may, subject to the approval of the state board of accounts, bond or cause to be bonded such deputies or employees by either individual or blanket bonds, in amounts and with terms, conditions and sureties subject to the approval of such administrative officer or governing body: *Provided, however, the provisions of this act shall not include any officer, deputy, employee, treasurer or tax collector*

by whatever title known, or any other individual required by any law to execute and furnish an individual official bond or other like obligation.” (Our emphasis)

The Acts of 1917, Ch. 144, Sec. 3, as found in Burns’ (1963 Supp.), Section 22-3218, which provides, in part:

“* * * The board of commissioners shall require each member of such board of trustees, the superintendent and any employee whose duty it is to handle any of the funds of the hospital to execute a surety bond in such amount as may be required by such board of county commissioners, and said bond to be conditioned for the faithful performance of his duties, and to be approved by the board of county commissioners and filed with the county auditor. Premiums on bonds required by this paragraph may be paid out of public funds, and the bond may be a blanket corporate surety bond* * *.”

Section 3, *supra*, as it stands after the 1963 amendment, *supra*, is an express legislative enactment which requires certain specified persons to be bonded by either an individual or blanket corporate surety bond.

Burns’ 49-143, *supra*, makes a distinction between persons required by law to execute and furnish surety bonds and those who are not. The first portion of Burns’ 49-143, *supra*, is applicable to those persons who are not required by law to furnish bonds and authorizes the State Board of Accounts to approve any bonds upon such a person, while the last part of the statute set out in the proviso clearly removes any approval requirement by the State Board of Accounts upon persons required by law to be bonded.

Since Burns’ 22-3218, *supra*, requires the board of trustees, the superintendent and any employee who handles funds of a hospital organized under the 1917 County Hospital Act to execute either an individual or blanket corporate surety bond conditioned upon the faithful performance of their duties, I am of the opinion that the proviso found in Burns’ 49-143, *supra*, makes the approval by the State Board of Accounts of such surety bonds unnecessary. However, should such a hos-

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pital deem it necessary to bond persons other than those set out in the statute, approval from your department would be required since those persons would not be required by law to execute and furnish such bonds.

Your second question concerns a new section added to the 1917 County Hospital Act by the 1963 General Assembly. This section, Acts of 1917, Ch. 144, Sec. 3a, found in Burns' (1963 Supp.), Section 22-3218b, complements Section 3 of the Act, Burns' 22-3218, *supra*, and makes special provisions authorizing the board of trustees to have their own treasurer. Under Burns' 22-3218, *supra*, the county treasurer serves as the treasurer for the board of trustees.

In some respects Sections 3 and 3a are identical; however, Section 3a makes no provision for the bonding of the trustees, superintendents or persons who handle hospital funds. Section 3 does make a specific provision for this.

In order to establish the legislative intent with respect to bonding the board of trustees, the superintendent, treasurer and other persons who may handle hospital funds when the hospital is functioning pursuant to the provisions of Section 3a, it is necessary to turn to Section 3, which is *in pari materia*, to find a guide for bond approval. Section 3 does not control all the provisions of Burns' 22-3218b, *supra*, as indicated in 1963 O. A. G., No. 46. In this instance the intent is to have the bond approved by the county commissioners as provided for by Section 3, and not to submit it to the State Board of Accounts, pursuant to the first portion of Burns' 49-143, *supra*. In the case of Combs, as Auditor of the State of Indiana, *et al. v. Cook* (1958), 238 Ind. 392, 151 N. E. (2d) 144, it is stated:

"It is not to be presumed that any part of an Act is meaningless and without a definite purpose. If possible, effect must be given to every word and clause used in the Act. *Olszewski v. Stodola* (1948), 226 Ind. 639, 643, 82 N. E. 2d 256; *Garvin Rec. v. Chadwick Realty Corp.* (1937), 212 Ind. 499, 506, 9 N. E. 2d 268.

"Our duty here is to ascertain the intent of the Legislature as shown, by the entire Act, each section being considered with reference to all other sections * * *."

In my opinion, the Legislature clearly intended, as evidenced by the language found in Burns' 22-3218, *supra*, that trustees, superintendents and all persons who handle hospital funds be bonded, either individually or under a blanket corporate surety bond. I find no language in Section 3a which defeats this intention, and I must, therefore, conclude in answer to your second question that the boards of trustees, superintendents, and any employees who handle funds of a hospital organized under the 1917 County Hospital Act and operating pursuant to Section 3a of the Act are *required* to execute either an individual or blanket corporate surety bond. Further, that State Board of Accounts approval of such bond is not required unless persons other than those set out in statute are to be bonded.

By way of summary and conclusion, I am of the opinion that hospitals organized under the 1917 County Hospital Act and operating pursuant to either Section 3 or 3a of the Act are required by law to have the board of trustees, the superintendent, and any employee who handles hospital funds bonded under either an individual or blanket corporate surety bond. Approval by the State Board of Accounts of such bond is not required unless persons other than those set out in the statute are to be bonded.

OFFICIAL OPINION NO. 52

November 14, 1963

Hon. Richard O. Ristine
Lieutenant Governor of Indiana
332 State House
Indianapolis 4, Indiana

Dear Lieutenant Governor Ristine:

This will acknowledge receipt of your letter requesting an Official Opinion regarding the provisions of the Acts of 1905, Ch. 104, Sec. 1, as amended and found in Burns' (1950 Repl.), Section 15-317, as it relates to the appropriation of funds for 4-H Fairs.