

With respect to the taxes for the year 1930, it would seem that inasmuch as the warranty deed of said W. F. Seymour was tendered to your department, representing the State of Ohio in this matter, in November, 1929, long prior to the time when the lien of the taxes for the year 1930 attached to this property, said property should go upon the tax exempt list with respect to the taxes for the year 1930, and subsequent years.

Upon examination of the warranty deed tendered by said W. F. Seymour, I find that the same has been executed and acknowledged by said W. F. Seymour and his wife, Kitta C. Seymour, in the manner required by law, and that said deed as to form is sufficient to convey the several tracts of land here under investigation to the State of Ohio by fee simple title, free and clear of the dower interest of said Kitta C. Seymour, and of all encumbrances whatsoever except taxes due and payable in December, 1929, and thereafter, as to which said deed contains the recital that "said taxes the said grantee herein assumes and agrees to pay." Upon examination of a copy of the option, which copy is a part of the files relating to the purchase of this property, I do not find any agreement on your part to pay any of the taxes upon this property, and this likewise is a matter which should be adjusted by agreement with the grantor before any voucher is issued for the payment of this property.

Encumbrance estimate No. 5840, which has been submitted to me as a part of the files relating to the purchase of the property here in question, has been executed in the manner required by law and the same shows sufficient balances in the proper appropriation account to pay the purchase price of this property, which purchase price is the sum of \$3,710.00.

I further find upon examination of the files submitted to me that the money necessary to pay the purchase price of this property in the amount above stated has been released for said purpose by the Controlling Board, in accordance with the authority conferred upon said Board by Section 11 of House Bill 510, enacted by the 88th General Assembly.

I am herewith enclosing said corrected abstract of title, warranty deed, encumbrance estimate No. 5840, Controlling Board certificate, and other files which have been submitted to me in this matter.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1861.

**BOND—FOR REAL ESTATE BROKER'S LICENSE—SURETY MAY NOT
TERMINATE LIABILITY BEFORE EXPIRATION DATE OF SUCH
BOND BY NOTIFYING REAL ESTATE EXAMINERS.**

SYLLABUS:

The surety on a real estate broker's bond executed under the provisions of Section 6373-35, General Code, may not terminate its liability as to future transactions prior to the expiration of such bond by notifying the State Board of Real Estate Examiners.

COLUMBUS, OHIO, May 14, 1930.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"Will you please render an opinion on the following question:

Where a bonding company files a request in writing to be released on its

bond for a real estate broker's license and no charges are made against the broker of violating any of the provisions of the real estate license law, can such bonding company by notifying the State Board of Real Estate Examiners in writing terminate its liability on the bond before the expiration of the bond?

A copy of bond form required by the State Board of Real Estate Examiners is hereto attached."

The conditions of the obligation as appearing in the bond form submitted are as follows:

"The conditions of the above obligation are such that whereas the above named principal has made application to the Board of Real Estate Examiners of the State of Ohio for a license as real estate broker to engage in or continue in the business of real estate broker in accordance with the provisions of the act entitled: 'An Act regulating the business of real estate brokers, requiring a license and a bond from real estate brokers and providing a penalty,' and being Sections 6373-25 to 6373-51, both inclusive, of the General Code of Ohio, and particularly in accordance with the provisions of Section 6373-29 of the General Code.

NOW, THEREFORE, if the said-----, as principal, shall in the event said license be issued to him, conduct his business as real estate broker in accordance with the provisions of said act, and shall indemnify any person who may be damaged by the failure on the part of the principal to conduct his business in accordance with the provisions of said act, said principal hereby agreeing to indemnify any person damaged by any misrepresentation or fraud on the part of said principal or by reason of the violation of the terms of said act, then this obligation shall be void, otherwise to remain in full force and effect.

It is expressly understood and agreed that the said liability of the surety for any and all claims hereunder shall in no event exceed the sum of One Thousand Dollars (\$1,000.00)."

All real estate brokers' licenses expire December 31 of each year. Sections 6373-38 and 6373-39, General Code. The obligation under this bond is predicated upon a license being issued pursuant to an application therefor and since all licenses expire December 31 of each year, it is evident that the contract of the surety is limited as to time and is not a continuing obligation.

Section 6373-35, General Code, requires the execution and filing of this bond and is as follows:

"No real estate broker's license shall be issued until the grantee thereof shall have executed and filed a bond to the State of Ohio in the sum of \$1,000 and with such surety as the real estate examiners may require. Such bonds shall be filed with the State Board of Real Estate Examiners and kept by them in their offices. Such bond shall be conditioned upon the faithful observance of all the provisions of this act and shall also indemnify any person who may be damaged by a failure on the part of the applicant for a real estate broker's license to conduct his business in accordance with the requirements of this act (G. C. Sections 6373-25 to 6373-51). Any person claiming to have been damaged by any misrepresentation or fraud on the part of a real estate broker or by reason of the violation of the terms of this act, may maintain an action at law against the broker making such representations or perpetrating such fraud or violating the provisions of this act, and may join as

parties defendant the sureties on the bonds herein provided for. Such bonds shall be in the form prescribed by the Board of Real Estate Examiners and approved by them."

The liability of the surety on this bond is to arise by future acts of the principal, so that the question becomes one of whether or not under such circumstances the surety can terminate its liability as to future transactions prior to expiration date by notifying the obligee of its intention so to do.

The following rule is laid down in 32 Cyc. 85:

"If the consideration for the contract of a surety is executory—if his liability is to arise or to be increased by future acts of the obligee or creditor, and no time has been prescribed in the contract, the surety can terminate his liability by notifying the creditor or obligee that he withdraws, remaining liable, however, for any rights the creditor or obligee previously may have acquired."

In support of this text are cited the following cases which hold as set forth in the syllabi:

Emery vs. Baltz, et al, 94 N. Y. 408.

"A surety, bound simply for the fidelity and honesty of his principal in the performance of a contract of employment, may revoke and end, future liability, either whether the guaranteed contract has no definite time to run, or where it has such time, but the principal has so violated it that the creditor may lawfully terminate it on account of the breach.

Where the principal commits an act of dishonesty and is unfaithful to his trust, the employer may end the contract, and the surety may require this to be done.

* * * * *

Jeudevine vs. Rose, 36 Mich. 54.

"Sureties in a bond given to secure performance by their principal of future mercantile engagements, and in which no period of limitation or liability is fixed, who have notified the obligees that they will no longer be bound for future transactions, are held discharged from liability for transactions thereafter entered upon, where no change in circumstances by the obligees has occurred on the faith of a longer continuance of the sureties, and they are not prejudiced by such withdrawal."

In Stearns on Suretyship, 3rd Edition, in speaking of a revocation of a contract of suretyship by the surety, it is said at p. 184:

"The contract of the surety is not in general revocable by notice, and such promissor cannot withdraw from his obligation, without the consent of the creditor, unless stipulated in his contract or provided by law, as in cases of bonds of public officers in some jurisdictions."

In case there are statutory provisions as to the revocation of a continuing guaranty by the grantor in respect to future transactions, it has been held that a surety may at any time revoke a contract not limited as to time, with respect to liability upon any transaction which was not at that time begun. *White Sewing Machine Co. vs. Courtney* (Cal.), 75 Pac. 296. In this case notwithstanding the statutory provisions

for termination of a contract of guaranty, the court recognized that where a contract of surety is for a definite time, the surety may not revoke. The court said:

“It may be conceded that if the bond had recited that Courtney was appointed agent of the plaintiff for a definite time, and the obligation of Brown was to stand as his surety during that time, he could neither revoke the contract, nor would he be entitled to release without consent of the plaintiff.”

Having in mind the principles contained in the foregoing authorities, the real estate broker's bond here under consideration is limited as to time as well as to liability. We have, therefore, an obligation of a surety for a definite time. Furthermore, the Ohio law contains no provisions authorizing the surety on such a bond to withdraw from the obligation prior to the expiration thereof. I am, therefore, of the opinion, in specific answer to your question, that the surety on a real estate broker's bond executed under the provisions of Section 6373-35, General Code, may not terminate its liability as to future transactions prior to the expiration of such bond by notifying the State Board of Real Estate Examiners.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1862.

APPROVAL, BONDS OF WESFIELD RURAL SCHOOL DISTRICT, WASHINGTON COUNTY—\$1,600.00

COLUMBUS, OHIO, May 14, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1863.

APPROVAL, BONDS OF NORTH OL MSTED VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY—\$295,000.00.

COLUMBUS, OHIO, May 14, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1864.

APPROVAL, SUPPLEMENTAL RESOLUTIONS ON ROAD IMPROVEMENTS IN DELAWARE COUNTY.

COLUMBUS, OHIO, May 15, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*