

am of the opinion that the court under the power delegated to it may by rule do the same so long as such rules do not fix the amount of such fees and costs to exceed those provided for like actions and proceedings by general law, including Section 3005, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

240.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE WATTS AND SUHRBIER COMPANY OF TOLEDO, OHIO, TO CONSTRUCT PLUMBING, HEATING AND VENTILATING AND ELECTRICAL WORK FOR ANNEX TO MEN'S HOSPITAL, TOLEDO STATE HOSPITAL, TOLEDO, OHIO, AT EXPENSE OF \$26,626.00—SURETY BOND EXECUTED BY THE METROPOLITAN CASUALTY INSURANCE COMPANY.

COLUMBUS, OHIO, March 26, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works, and The Watts and Suhrbier Company, of Toledo, Ohio. This contract covers the construction and completion of Combined General, Plumbing, Heating and Ventilating and Electrical Contract for Annex to Men's Hospital, Toledo State Hospital, Toledo, Ohio, and calls for an expenditure of twenty-six thousand six hundred and twenty-six dollars (\$26,626.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the Metropolitan Casualty Insurance Company of New York appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General

241.

COMMISSIONER OF SECURITIES—NOT AUTHORIZED TO ACCEPT CONTINUATION OF ORIGINAL BOND RESTRICTING MAXIMUM LIABILITY OF SURETY COMPANY TO \$10,000.00—MUST BE A SEPARATE BOND FOR EACH LICENSING PERIOD.

SYLLABUS:

Under Section 6373-3 (d), General Code, the commissioner of securities is not authorized to accept from a licensed dealer, upon renewal of license, a certificate of continua-

tion of the original bond of such dealer, so worded as to restrict the liability of the surety company to a maximum of \$10,000.00 in any event.

Under Section 6373-3 (d) of the General Code, the Commissioner of Securities must require of each dealer licensed by him a separate bond for each licensing period, in an amount not less than \$10,000.00.

COLUMBUS, OHIO, March 28, 1927.

HON. NORMAN E. BECK, *Chief of Division, Division of Securities, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your recent communication, as follows:

“Section 6373-3 (d) of the General Code of Ohio requires that each applicant shall execute and file a bond to the State of Ohio in such sum in no case to be less than ten thousand dollars and with such surety as the commissioner requires, and shall also execute and file a bond to the state of Ohio in such sum as the commissioner may require, but not to exceed twenty-five hundred dollars with such surety as the commissioner requires, for each agent named in such application or in any supplemental application made thereto. Such bonds shall be filed with the commissioner of securities and kept by him in his office. Such bonds shall be conditioned upon the faithful observance of all of the provisions of this act, and shall also indemnify any purchaser of securities from such dealer or agent who suffers a loss by reason of misrepresentations in the sale of such security by such dealer or agent. Any purchaser claiming to have been damaged by misrepresentation in the sale of any security by such dealer or agent may maintain an action at law against the dealer or agent making such misrepresentations; or both the dealer and agent where the agent makes such misrepresentations; and may join as parties defendant the sureties on the bonds herein provided for.”

A number of bonding companies signing bonds as surety for such dealers and agents, have at various times issued renewal certificates for each successive calendar year after the original bonds had been given. For example, after an original bond had been filed for the year 1924, a renewal certificate was subsequently filed for the following years. These continuation certificates generally read as follows:

‘In consideration of the sum of One Hundred and no/100 (\$100.00) Dollars, ----- Surety Company hereby continues in force indemnity bond in the sum of Ten Thousand and no/100 (\$10,000.00) Dollars on behalf of John Doe, in favor of the State of Ohio, for the extended term beginning on the First day of January, 1925, and ending on the Thirty-first day of December, 1925, subject to all covenants and conditions of said bond.

This continuation is executed upon the express condition that the company’s liability under said bond and this and all continuations thereof, shall not be cumulative and shall in no event exceed the sum of Ten Thousand and no/100 (\$10,000.00) Dollars.

Signed and Sealed this ----- day of -----, 192...
----- Surety Company.’

The vast majority of the bonding companies contend that the language of the statute limits the liability of the surety at all times on a \$10,000.00 bond to a maximum of \$10,000.00, regardless of the number of years covered, if such original bond is only extended by renewal certificate as above.

Kindly advise whether the maximum liability on a dealer's bond of \$10,000.00, so extended annually for a period of three years, would be \$30,000.00, with a maximum liability for any one year of \$10,000.00; or would the maximum liability covering the three years be only \$10,000.00?

Your opinion will decide whether this Department shall continue to accept renewal certificates, renewing the original bond, or whether this Department will require a new bond for each calendar year that the license is in force."

It is my opinion that the renewal certificate which you quote has no other or greater effect than if the original bond had been for a period of three years rather than one year. This being so, the maximum liability upon such a bond of this character of a renewal would be ten thousand dollars, irrespective of the year in which the liability would accrue or whether there would be more than one liability accruing in separate years.

While you have not asked the specific question, I feel that I should say that in my opinion the use of a renewal form of this character is not warranted and that you should refuse to permit its filing. Section 6373-3 of the General Code, which provides for the application for a dealer's license, contains the following relative to the bond which must be given:

"Every such applicant shall execute and file a bond to the State of Ohio in such sum in no case to be less than ten thousand dollars and with such surety as the commissioner requires, and shall also execute and file a bond to the State of Ohio in such sum as the commissioner may require, but not to exceed twenty-five hundred dollars with such surety as the commissioner requires, for each agent named in such application or in any supplemental application made thereto. Such bonds shall be filed with the commissioner of securities and kept by him in his office. Such bonds shall be conditioned upon the faithful observance of all of the provisions of this act, and shall also indemnify any purchaser of securities from such dealer or agent who suffers a loss by reason of misrepresentations in the sale of such security by such dealer or agent. Any purchaser claiming to have been damaged by misrepresentation in the sale of any security by such dealer or agent may maintain an action at law against the dealer or agent making such misrepresentations; or both the dealer and agent where the agent makes such misrepresentations; and may join as parties defendant the sureties on the bonds herein provided for."

You will note that the minimum bond for a dealer is ten thousand dollars and I believe that an indemnity bond in at least this amount must be required upon each renewal of license. The statutes make it clear that the dealer's license is issued for one calendar year only. Thus by Section 6373-4, an annual fee of fifty dollars for each applicant and an additional fee of five dollars for each agent is required and a like fee upon each annual renewal.

Section 6373-5 provides:

"Such license shall be taken out at the beginning of each calendar year."

Clearly, therefore, each annual license is a separate and distinct authority to do business and it necessarily follows that there must be provided for each licensing period a separate bond for the dealer in an amount not less than \$10,000.00. I am confirmed in this view by the form of bond which you have submitted, which makes specific reference to the license being for a definite term ending on a definite date.

Under the circumstances, I am clearly of the opinion that each dealer must, for each separate license period, furnish a separate bond in an amount discretionary with you, with the exception that each bond shall in no event be less than \$10,000.00.

The same reasoning applies to the agent's bond and I feel that you should require a separate bond for each separate licensing period. You will note, however, that whereas the dealer's bond provides for a minimum amount, the provisions for an agent's bond fixes the maximum at \$2,500.00. You cannot, therefore, require for any one licensing period a bond in excess of \$2,500.00. Whatever amount may be reasonable in your determination should probably be required annually, although under the wording of the statute no minimum is fixed limiting your discretion.

You are accordingly advised that the renewal certificate form which you submit restricts the liability of the surety company to a maximum of \$10,000.00 in any event and that you are therefore not warranted in accepting such form of renewal, but should require a separate bond from each dealer for each year in an amount not less than \$10,000.00.

Respectfully,
EDWARD C. TURNER,
Attorney General.

242.

CITIZENSHIP—CONVICTION OF FEDERAL STATUTE—NOTARY PUBLIC.

SYLLABUS:

1. *Since there is no federal statute depriving a person convicted of a felony denounced by the Federal Penal Code of his United States citizenship, with a consequent forfeiture of citizenship in Ohio, and since there is no Ohio statute making provision for the forfeiture of citizenship of a person so convicted, a person who has served a term of imprisonment in the federal prison at Atlanta for the commission of a felony under the laws of the United States is still a citizen of the United States and of the State of Ohio.*

2. *By virtue of Section 120, General Code, before a notary public is appointed the applicant must produce to the governor a certificate from a judge of the common pleas court, court of appeals or supreme court that such applicant is inter alia "of good moral character". Whether or not such an applicant is a person of good moral character is a question of fact, and it must be left to the wisdom and good conscience of a judge of one of the courts above enumerated to determine whether he can truly so certify. In determining this question due consideration should be given to the fact that the applicant had been convicted of a felony and had served a term of imprisonment in the federal prison at Atlanta. Such judge must be satisfied from his personal knowledge that the applicant is a person of good moral character.*

3. *Whether such person would be appointed rests in the discretion of the Governor, and the Governor cannot be mandamusd to make such appointment.*

COLUMBUS, OHIO, March 28, 1927.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date reading as follows:

"Several years ago a man by the name of John Doe of Troy, Ohio, was sentenced to the Federal Prison at Atlanta for attempting to rob the mail. He was released on parole and has been discharged.

This Mr. Doe now wishes to become a Notary Public and exercise other