

“A surety may revoke and end his liability, either where the guaranty contract has no definite time to run, or where it has such time, but the principal has so violated it, that the bondsmen may lawfully terminate it on account of the breach. Cases to this effect are *La Rose v. Logansport Nat. Bank*, 102 Ind., 332, 1 N. E., 805; *Emery v. Baltz*, 94 N. Y., 408; *Singer Mfg. Co. v. Draughan*, 121 N. C., 88, 28 S. E., 136, 61 Am. St. Rep., 657; *White Sewing Mach. Co. v. Courtney*, 141 Cal., 674, 75 P., 296, and many other cases.”

By virtue of section 122, supra, notaries are commissioned for a period of three years. The form of the bond used clearly indicates that it is given to assure the faithful discharge of the duties of the notary. These duties start with the appointment and qualification and continue for the duration of his commission.

Therefore, since there is no provision for the surety to request a termination of his liability under the bond, I am of the opinion that a surety on a notary public's bond is released only by the death, expiration of term or removal from office of the notary public.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1432.

MOTOR VEHICLE LICENSE TAX—WEIGHT OF SIDE BOARDS
ATTACHED TO TRUCK — WHETHER USE PERMANENT
OR TEMPORARY — SHOULD BE INCLUDED TO DETER-
MINE AMOUNT OF SUCH TAX.

SYLLABUS:

The weight of side boards attached to a truck should be included in determining the amount of the motor vehicle license tax whether such side boards are used permanently or temporarily.

COLUMBUS, OHIO, November 15, 1939.

HON. CYLON W. WALLACE, *Registrar, Bureau of Motor Vehicles, Colum-
bus, Ohio.*

DEAR SIR: Your request for my opinion reads in part as follows:

“Calling your attention to the provisions of Section 6293 G. C. as amended by the last legislature (House Bill number 94), your opinion is requested as to the status of ‘side boards’ attached

or affixed to a commercial car. Specifically, should the weight of the 'side boards' be included in the total weight in the determination of the license plate fee?

For your information it is not uncommon for a commercial car to be equipped with so-called extra side boards, in order to carry a greater load, being particularly applicable in the carrying of coal, stone and other material and goods. In most instances the use of the side boards is of a temporary nature. Does that fact have any bearing on the status?"

Section 6293, General Code, reads in part as follows :

"The weight of all motor vehicles shall be the weight of the vehicle fully equipped as determined on a standard scale, except the weight of any machinery mounted upon or affixed to a motor vehicle and which is not inherently motor vehicle equipment shall not be included in the determination of the total weight."

By virtue of Section 6292, General Code, the rate of tax for commercial vehicles is based on the weight of the vehicle "fully equipped."

The correct meaning of the words "weight of the vehicle fully equipped" was exhaustively discussed in the case of *State, ex rel. Tejan, et al. vs. Lutz, et al.*, 31 N. P. (N. S.) 473, the tenth headnote of said case reading :

"When equipment, apparatus, or machinery does not assist in effectuating the purposes of a motor vehicle, but serves other purposes not inherently characteristic of a motor vehicle nor related to its operative mechanism or operative purposes, it is not subject to taxation under the motor vehicle license tax law."

On pages 511 and 512, the Court said :

"Truck equipment being, therefore, that equipment usable for vehicular purposes, which becomes a part of the truck, may be attached by various methods, and attached either permanently or temporarily and when on the truck is a legal part thereof. It may be classified as part of the body, or it may be of an accessory nature, but it must possess characteristics designed for use as part of the motor vehicle and must assist in accomplishing the purposes of such vehicle, that is, transportation of the load. The fundamental inquiry is whether it is per se truck equipment. If the answer is affirmative, then it is such equipment as the legislature contemplated.

Body equipment is inherently truck equipment. If addi-

tional equipment in the form of accessories is added and becomes a part of the truck, even if removable, it is part of the taxable truck weight.”

On page 512, the Court propounded the following tests to be used in determining whether certain equipment was inherently “motor vehicle equipment”:

“First, does the apparatus become an integral part of the truck and form an addition to its structure so that it may be regarded as a part of the truck itself?

Second, whether permanent or detachable, is it per se truck equipment?

Third, does its use indicate it to be functioning as part of the truck for truck uses, or as machinery, in itself, for its special use and results?

Fourth, does it carry the truck load, or assist in doing so, or does it merely become an object transported?”

It is clear from the above tests and discussion that side boards attached to a truck must be classed as truck equipment and taxed as such. Such equipment is usable only to effectuate the purpose of the vehicle—to assist in carrying the load, which is the only purpose of the vehicle itself. In addition such equipment, when attached, becomes an integral part of the truck.

Section 6293, General Code, at the time the above case was decided, reads as follows:

“The weight of all motor vehicles shall be the weight of the vehicle fully equipped as represented by the manufacturer or as named in the shipping bill; provided that if this be not known or is not the actual weight the actual weight as determined on a standard scale shall govern.”

Even though the wording of Section 6293, supra, has been changed as noted herein the quotations from the Tejan case, supra, are applicable to the question you have presented for the reason that the court was concerned primarily with the meaning of the words “weight of the vehicle fully equipped.”

You state, however, that in most instances the use of side boards is of a temporary nature. The court in the Tejan case, supra, stated that equipment may be attached to the truck either permanently or temporarily but if the same possesses characteristics designed for use as part of the motor vehicle and assists in transporting the load, then such equipment is a part of the taxable truck weight. In addition to this fact the Legis-

lature, in providing in Section 6293, supra, that truck equipment should be included as a part of the taxable weight, did not differentiate between equipment regularly used and that which is used only occasionally.

Consequently, I am constrained to the view that side boards, whether used permanently or temporarily, should be included in determining the taxable truck weight. If the owner of a commercial motor vehicle has work which requires additional truck equipment, the weight of which was not included in the weight of the vehicle when the license was procured, then he should have the additional weight determined and pay the tax thereon before using said equipment.

In view of the above and in specific answer to your inquiry, I am of the opinion that the weight of side boards attached to a truck should be included in determining the amount of the motor vehicle license tax whether such side boards are used permanently or temporarily.

Very truly yours,

THOMAS J. HERBERT,
Attorney General.

1433.

ABSTRACT OF TITLE, DEED, ETC., PURCHASE BY STATE FROM ISIAH HARRISON, EXECUTOR, ESTATE, JOHN H. HARRISON, 3 ACRES LAND, 2477 LISLE ROAD, CLINTON TOWNSHIP, FRANKLIN COUNTY, USE, OHIO STATE UNIVERSITY.

COLUMBUS, OHIO, November 15, 1939.

HON. CARL E. STEEB, *Secretary, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination an abstract of title, executors' deed, contract encumbrance record No. 63 relating to the purchase by Ohio State University of a parcel of land from Isiah Harrison as Executor of the Estate of John H. Harrison, deceased, late of Franklin County, Ohio, and which parcel of land is more particularly described as follows:

"Being 3 acres of ground located on the west side of the Scioto River and Olentangy Free Turnpike Road, now known as Lisle Road, about 1000 feet north of West Lane Avenue, and being more particularly known as 2477 Lisle Road, the residence of John H. Harrison, Clinton Township, Franklin County, Ohio."

Upon examination of the abstract of title of the above described property, which abstract is certified by the abstracter under date of September