

the city, which necessarily adds to this case a complication which, by a reasonable degree of painstaking in the trial of the case, might well have been obviated."

Nevertheless, the court held the obligation of the so-called "omnibus bond" to be valid, and if the officer had been required by law or ordinance to give a bond, the conclusion of the court manifestly would have been the same.

Inasmuch as the court held the obligation of the signer of the instrument, to wit the bonding company, to be a primary obligation rather than that of a surety, it would not make any difference, in my opinion, whether the officer or employe whose liability was being guaranteed by the instrument, was named or whether he was simply designated as the occupant of a certain position such as "police officer," "storekeeper," "secretary to director," "civil engineer" or whatnot.

Coming now to your third question. This question, I understand, is prompted from the fact that the contract in question purports, on its face, to be made between the Eagle Indemnity Company and the "City of Cleveland, Ohio, Department of Public Utilities, Division of Light, Water, Heat & Power", whereas the schedule attached thereto, which is referred to in the contract as listing officers, employes and positions covered by the obligation, is headed "Division of Water and Heat", and certain officers and employes and positions are listed thereunder which have nothing to do with water and heat. I am informed, however, in a later communication from you that all the officers, employes and positions listed in the schedule are in the Department of Public Utilities and under the supervision of the Director of Public Utilities of the City of Cleveland, Ohio.

Under the scheme of government adopted by the people of the City of Cleveland, as set up in its charter, there is a Department of Public Utilities, administered by a Director (Sections 37 and 39 of the Charter of the City of Cleveland). The department is not divided, by the terms of the charter, into distinct divisions, although it naturally falls into divisions, and administrative officers no doubt refer to the different divisions for convenience in speaking of the several activities of the department. Just why the schedule came to be headed Division of Water and Heat, I can not say, but regardless of whatever intention might have been in the mind of the person who drew the schedule, if in fact any thought was given to the matter, it could not change the manifest intention expressed in the body of the bond to the effect that the obligation of the bond was intended to cover all positions in the Department of Public Utilities. The phrase "Division of Light, Water, Heat and Power" is simply descriptive of the activities of the Department of Public Utilities and may be regarded, in my opinion, as mere surplussage, both in the body of the bond and the heading of the schedule. It is my opinion that the faithful performance of duty on the part of any officer, employe or position listed in the schedule which is under the supervision of the Director of Public Utilities is covered by the bond, if the premium covering the risk was paid, which I assume has been done.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3401.

APPROVAL, BONDS OF HOPEWELL TOWNSHIP RURAL SCHOOL DISTRICT, PERRY COUNTY, OHIO.

COLUMBUS, OHIO, July 6, 1931.

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