

1157.

APPROVAL, BONDS OF VILLAGE OF BAY, CUYAHOGA COUNTY—
\$24,788.28.

COLUMBUS, OHIO, November 7, 1929.

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

1158.

INSANE PERSON—FORM OF BOND GIVEN FOR RELEASE FROM
HOSPITAL—WHERE FILED.

SYLLABUS:

Bond to be given upon release of insane patient discussed.

COLUMBUS, OHIO, November 7, 1929.

HON. HAL H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads:

“Section 1979 G. C., of the law governing state hospitals for the insane (113 v. 92) provides as follows:

‘If the friends of a patient ask his release from the hospital, the superintendent may require a bond to be executed to the state in such sum and with such sureties as he deems proper, conditioned for the safe keeping of the patient.’

A question has arisen as to what shall constitute a proper and sufficient bond under this provision of law; and whether any steps are required after the execution of the bond, with respect to filing or recording the same, to make it effective.

We respectfully request that your Department draw up a form of bond that will answer the purpose of this section, and advise us how such a bond shall be executed and where filed.”

Section 1979, to which you refer, prior to its amendment by the 88th General Assembly in the form set forth in your inquiry, provided:

“If the friends of a patient ask his discharge from the hospital, the superintendent may require a bond to be executed to the state in such sum and with such sureties as he deems proper, conditioned for the safe keeping of the patient. No patient charged with or convicted of homicide shall be discharged without the consent of the superintendent and the board of trustees.”

From the above it will be observed that in so far as your question is concerned, there is no material distinction between the section under consideration before amendment and after amendment. The principal change in the amendment con-

sisted of substituting the word "release" for the word "discharge." Also the last sentence of the original section was eliminated. The object of said amendment is clear. Under the former section a bond could be required only in cases of a discharge. As a matter of practice numerous patients are released from the insane hospital to their friends for trial visits and such release does not operate as a discharge. It is evident that the Legislature thought it advisable to authorize the taking of a bond in case of any release from any such institution if in the judgment of the superintendent the same is advisable.

In communicating with the superintendent of the Columbus State Hospital, information has been obtained to the effect that Section 1979, in so far as the requirement of the bond is concerned, has never been utilized by said hospital authorities. Clearly said section is not mandatory that a bond shall be required, but is rather permissive in authorizing the superintendent to require a bond to be executed to the state in such form and with such sureties as he deems proper, "conditioned for the safe keeping of the patient." The statute does not undertake to outline a form or provide any specific method of execution, nor does said statute indicate where such bond is to be filed. It would therefore appear in so far as the execution of the bond is concerned, that the ordinary and usual form of execution of bonds should be followed.

In the absence of statutory requirement relative to the execution of surety bonds, the general rule is that such an instrument should be in writing and no particular form is necessary. As stated in 9 Corpus Juris, page 11, "any form of words in writing under seal acknowledging a debt or binding the maker to pay a debt naming an obligee is sufficient." Where the bond is conditional, the conditions should be contained in the bond and set forth in definite terms and should set forth the circumstances and contingencies under and on which the bond can become void. But it is unnecessary that all of the details of the subject matter should be specifically set forth.

The amount of the penalty of the bond should be also clearly set forth and in the absence of specific direction as to the manner of execution as stated in Corpus Juris "generally speaking a bond may be said to be executed when the obligation has been reduced to writing and has been properly signed and sealed by the obligor and delivered to the obligee."

Applying the principle above stated, it would appear to be clear that the bond under consideration should be payable to the State of Ohio and should be for a penal sum definite and certain, fixed by the superintendent of the hospital. Furthermore, the surety should be approved by said superintendent and the said bond should definitely state the name of the patient who is to be released. Said bond should also state to whom such person is released and be conditioned for the safe keeping of the patient. It should further contain the stipulation to the effect that if the obligor complies with the condition of the bond, the same shall be null and void.

Inasmuch as there is no definite requirement as to where such bond shall be filed, it is suggested that it would be proper to file the same with the superintendent of the hospital releasing the patient. The superintendent being authorized to require such bond and approve the same, there should be no objection to requiring the same to be filed with such officer.

You do not request an opinion as to who may avail themselves of the proceeds of such a bond or what facts and circumstances would give rise to a claim for such penalty and no opinion is expressed thereon. In any event the statute is specific as to what the condition shall be which is for the "safe keeping of the patient."

In accordance with your request, I suggest the following form which is believed to be sufficient for such purposes :

BOND TO SAFELY KEEP INSANE PATIENTS

Know All Men By These Presents :

That We _____ as principal, and _____ and _____ as sureties, of the County of _____ in the State of Ohio, are held and firmly bound unto the State of Ohio in the penal sum of _____, lawful money of the United States, to which payment well and truly to be made, we do bind ourselves, our heirs, executors and administrators, and everyone of them jointly and severally by these presents.

The condition of the above obligation is such that whereas the said _____ has requested the release of a patient in the _____ State Hospital and that the superintendent of such hospital has required a bond to be executed in the sum hereinabove stated, conditioned for the safe keeping of said patient; now if the said _____ should cause said patient to be safely kept, then this obligation to be void, otherwise to remain in full force and effect.

Signed and delivered in the presence of :

Sureties :

Dated at _____ this _____ day of _____, 19_____.

I hereby approve the foregoing bond as to the penal sum and as to the sureties thereon.

Superintendent of _____
State Hospital.

It is suggested that the form hereinbefore prescribed may be changed as to detail if it suits the convenience of your department to do so. However, it is believed that the substance of the form hereinbefore set forth will be sufficient for the purposes of such bond.

In the event that the sureties upon such a bond are individuals, it is suggested that it would be wise to have attached thereto for the guidance of the superintendent in his approving thereof, evidence as to the justification of such surety. It is believed that the following form attached to said bond will be sufficient for such purpose.

JUSTIFICATION OF SURETIES

STATE OF OHIO

County of _____

_____, being first duly sworn, says that he resides in the State of Ohio and that his postoffice address is _____

-----; that he is one of the sureties who signed the above bond; that a true and correct financial statement showing the amount and specific character of his assets and liabilities is as follows:

ASSETS

LIABILITIES

and that said statement of liabilities includes his contingent liabilities as surety or otherwise.

Sworn to and subscribed in my presence this-----day of-----, 19-----.

SEAL

(Notary Public)

-----County, Ohio.

JUSTIFICATION OF SURETIES

STATE OF OHIO

County of-----

-----, being first duly sworn, says that he resides in the State of Ohio and that his postoffice address is -----; that he is one of the sureties who signed the above bond; that a true and correct financial statement showing the amount and specific character of his assets and liabilities is as follows:

ASSETS

LIABILITIES

and that said statement of liabilities includes his contingent liabilities as surety or otherwise.

Sworn to and subscribed in my presence this-----day of-----, 19-----.

SEAL

(Notary Public)

-----County, Ohio.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1159.

BOARD OF EDUCATION—MUST FURNISH TRANSPORTATION TO ELEMENTARY PUPILS IN MANNER PROVIDED BY STATUTES OR PAY OTHERS TO DO SO—SPECIFIC CASE.

SYLLABUS:

1. A board of education is required to furnish transportation for all elementary school pupils who live more than two miles from the school to which they have been assigned. In furnishing such transportation the board is required to cause the school