

674

HIGHWAY PATROL—BONDING OF EMPLOYEES BY BLANKET BOND—§§5501.22, 5503.01, R.C.

SYLLABUS:

1. The State Highway Patrol cannot under the provisions of Section 3.06, Revised Code, provide faithful performance blanket position bond coverage for all employees except the Superintendent, since all such employees are not required by law to execute bonds.
2. The provisions of Section 5501.22, Revised Code, do not apply to the bonding of State Highway Patrol employees.
3. Pursuant to the provisions of Section 3.06, Revised Code, a \$2,500.00 faithful performance blanket position bond would meet the requirements of Section 5503.01, Revised Code, that each patrolman and radioman execute a bond in the sum of \$2,500.00.

Columbus, Ohio, July 10, 1959

Hon. J. Grant Keys, Director
Department of Highway Safety
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"We respectfully request your opinion as to the following matters which concern Sections 3.06, 5501.22 and 5503.01 of the Revised Code:

(1) Can the State Highway Patrol provide faithful performance blanket position bond coverage for all employees except the Superintendent, regardless of title, under the provisions of Section 3.06 and pay premiums on such a bond out of funds appropriated to the State Highway Patrol.

(2) Do the provisions of Section 5501.22 have any bearing on the bonding of State Highway Patrol employees.

(3) Would a \$2,500.00 faithful performance blanket position bond meet the requirements of Section 5503.01 that each patrolman and radioman execute a bond in the sum of \$2,500.00.

"Our patrolmen and radiomen (radio operators) are now covered by a 'Name Schedule' type bond. No other employees except the Superintendent are presently bonded.

"Due to the substantial saving in premium involved we desire to change to a faithful performance blanket position bond (bonding of all employees required) provided such a bond properly covers patrolmen and radiomen and provided employees not specifically required by statute to furnish bond can be included.

"Since the present bond coverage of patrolmen and radiomen expires on July 12, 1959, we would appreciate immediate action on this request."

The relevant portion of Section 3.06, Revised Code, provides:

"Notwithstanding the provisions of any other law requiring an official bond to be *conditioned substantially to the effect that an officer, clerk or employee will faithfully perform his duties*, it shall be permissible in lieu thereof, with the consent and approval of the officer or governing body authorized to require the bond, for any department or instrumentality of the state . . . , to procure a blanket bond from any duly authorized corporate surety covering officers, clerks and employees other than (a) treasurers

or tax collectors by whatever title known and (b) any officer, clerk or employee required by law to execute or file an individual official bond to qualify for office or employment. * * *." (Emphasis added)

Section 5503.01, Revised Code, provides in part:

"* * * Each patrolman and radioman, upon his appointment and before entering upon his duties, shall take an oath of office for faithful performance of his duties and *execute a bond* in the sum of twenty-five hundred dollars, payable to the state and for the use and benefit of any aggrieved party who may have a cause of action against any such patrolman or radioman *for misconduct while in the performance of his duties.* * * *." (Emphasis added)

The language of Section 5503.01, Revised Code, requiring the execution of a bond by patrolmen and radiomen for misconduct while in the performance of their duties is *clearly* substantially to the effect that the bond be conditioned upon faithful performance of their duties. Further, there is no language in Section 5503.01, *supra*, establishing such bond as a requisite for qualification for office or employment. Thus, it is my opinion that the provisions of Section 3.06, Revised Code, permitting the use of a blanket bond, are applicable, and that a \$2,500.00 faithful performance blanket position bond would therefore meet the requirement of Section 5503.01, Revised Code, that each patrolman and radioman execute a bond in the sum of \$2,500.00.

Your first question referring to all employees except the superintendent, raises the question of whether the Superintendent or the Director of Highway Safety has the authority to require a bond from employees other than those employees who are required by Section 5503.01, Revised Code, to execute a bond. Inasmuch as Section 3.06, Revised Code, merely authorizes blanket bonds in lieu of other bonds required by statute, this section cannot be construed as conferring any authority upon either the Superintendent of the Highway Patrol or the Director of Highway Safety to require bonds from other employees. It is therefore my opinion that the State Highway Patrol cannot, under the provisions of Section 3.06, Revised Code, provide faithful performance blanket position bond coverage for any employee who are not required by law to execute a bond.

In answer to your second question, the pertinent portion of Section 5501.22, Revised Code, reads:

“Each employee or appointee under Chapters 5501., 5503., 5505., 5511., 5513., 5515., 5517., 5519., 5521., 5523., 5525., 5527., 5529., 5531., and 5533. of the Revised Code in cases other than where the amount of the bond is fixed, may be required to give bond in such sum as the *director of highways may determine.* * * *” (Emphasis added)

This section was revised effective September 7, 1957, and it is not clear why at that time Chapters 5503., and 5505., Revised Code, entitled respectively State Highway Patrol and State Highway Patrol Pension Fund, were not eliminated therefrom for the reason that the State Highway Patrol previously had been made a division of the Department of Highway Safety and, thus, the employees thereof were no longer under the jurisdiction of the Director of Highways. Regardless of this seeming error, the only person given any authority to require bonds under the provisions of Section 5501.22, Revised Code, is the Director of Highways; and, since the Director of Highways no longer has any jurisdiction over the State Highway Patrol, the provisions of Section 5501.22, Revised Code, cannot, therefore, have any bearing on the bonding of State Highway Patrol employees.

In specific answer to your questions, it is my opinion and you are advised that:

1. The State Highway Patrol cannot under the provisions of Section 3.06, Revised Code, provide faithful performance blanket position bond coverage for all employees except the Superintendent since all such employees are not required by law to execute bonds.
2. The provisions of Section 5501.22, Revised Code, do not apply to the bonding of State Highway Patrol employees.
3. Pursuant to the provisions of Section 3.06, Revised Code, a \$2,500.00 faithful performance blanket position bond would meet the requirements of Section 5503.01, Revised Code, that each patrolman and radioman execute a bond in the sum of \$2,500.00.

Respectfully,
MARK MCELROY
Attorney General