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BONDS — OFFICERS OR EMPLOYES — DEPARTMENT OF  
PUBLIC WELFARE—SHOULD BE MADE PAYABLE TO STATE  
OF OHIO—SECTION 154-14 G. C.

## SYLLABUS:

Bonds of officers or employes of the Department of Public Welfare given in pursuance of Section 154-14, General Code, should be made payable to the State of Ohio.

Columbus, Ohio, January 22, 1945

Hon. Frazier Reams, Director, Department of Public Welfare  
Columbus, Ohio

Dear Sir:

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

“The bonds in this department are written to run to the Director of Public Welfare and not to the State of Ohio. Will you please advise whether this is done by statute or by some type of executive order?”

It is not only my opinion that it should be, but it is my desire that these bonds be written so that they will run to the State of Ohio. It seems to me that in this way the State and taxpayer will receive the maximum protection from these surety bonds.

Will you please advise me on the subject?”

Section 154-14, General Code, which is a part of the Administrative Code, reads as follows:

“Each officer whose office is created by Sections 154-3, 154-5 and 154-6 of the General Code shall, before entering upon the duties of his office, take and subscribe an oath of office as provided by law and give bond, conditioned according to law, with security to be approved by the governor in such penal sum as shall be fixed by the governor, not less in any case than ten thousand dollars. Such bond and oath shall be filed in the office of the secretary of state.

The director of each department may, with the approval of the governor, require any chief of a division created under the

authority of this chapter, or any officer or employee in his department, to give like bond in such amount as the governor may prescribe. The premium, if any, on any bond required or authorized by this section may be paid from the state treasury."

Section 6, General Code, so far as pertinent reads as follows :

"A bond payable to the State of Ohio, or other payee as may be directed by law, reciting the election or appointment of a person to an office or public trust under or in pursuance of the constitution or laws, and conditioned for the faithful performance, by such person, of the duties of the office or trust, shall be sufficient, notwithstanding any special provision made by law for the condition of such bond. \* \* \* ."

While Section 6 does not say that every bond must be payable to the State of Ohio, yet it appears to me to be a necessary implication from that statute that where the bond is given to secure the performance of official duties by an officer or employe of the state, the state and no one else should be named as the obligee on the bond. The words in the statute, "or other payee as may be directed by law" seem clearly to imply that unless otherwise directed by law, the bond must be given to the state.

In considering Section 154-14 supra, it will be noted that the first paragraph relates to the bond to be given by the officers whose positions are created by Sections 154-3, 154-5 and 154-6, General Code. By reference to these sections it will be found that they are the sections which create the several administrative departments, and provide for the directors who are in charge of those departments; also for the assistant directors and the several superintendents or chiefs of divisions under each of the departments. Clearly, these are all officers of the state, and their responsibility is to the state. The second paragraph of the section just referred to goes further, and includes all employes in the several departments who may be required by the director with the approval of the Governor, to give "like bond."

It is my opinion that the bond required by the first paragraph of Section 154-14, of the directors and assistants mentioned in the several sections referred to, must be made to the state and that when the statute in the second paragraph authorizes the director to require bonds of other employes and uses the words "like bond", there is a clear inference that

it was intended that the bonds of such employes should also name the state as the obligee.

As indicating the general policy of the legislature as to all officers who in any way have to do with affairs of the state or with the performance of duties imposed by the state, I call attention to the fact that in every statute relating to county officers the law expressly provides that the bond to be given by such officers shall be given to the state. Thus, Section 2399, relating to county commissioners provides in part as follows:

“Before entering upon the discharge of his duties each commissioner shall give bond signed by a bonding or surety company authorized to do business in this state, or, at his option, by two or more freeholders having real estate in the value of double the amount of the bond over and above all encumbrances *to the state* in a sum not less than five thousand dollars, \* \* \*”

(Emphasis added.)

In language almost identical, like provision is made as to the bonds of all of the county officers. Even as to the superintendent of the county home, Section 2524, General Code, provides:

“Before entering upon his duties the superintendent shall give bond to the state in a sum not to exceed twenty thousand dollars and not less than two thousand dollars as the commissioners require, \* \* \*”

Section 9, General Code, authorizes the principal in a public office to take from his deputy or clerk a bond conditioned for the faithful performance of the duties of his office. This provision is followed by the statement: “In all cases the principal shall be answerable for the neglect or misconduct in office of his deputy or clerk.”

I take it that the bond authorized by that section is merely a matter between the principal and his trusted deputy for whose acts the principal is responsible. In that case, of course, the bond is a personal matter and may be made to the principal officer. However, I assume that your inquiry relates to the bonds which are provided for by Section 154-14 supra, which in my opinion are clearly intended for the protection not of the director but of the state.

Accordingly and in specific answer to your inquiry it is my opinion that bonds of officers or employes of the Department of Public Welfare

given in pursuance of Section 154-14, General Code, should be made payable to the State of Ohio. It should be added that Section 154-14, General Code, above referred to was repealed, probably by mistake, in an act passed April 5, 1929, relating to the department of conservation. The section was reenacted in identical language by the 95th General Assembly, becoming effective September 16, 1943.

Respectfully,

HUGH S. JENKINS

Attorney General