

3807.

SURETY—MAGISTRATE MUST ACCEPT OFFER OF ONE SURETY ON
BOND WHEN—SECTION 13435-3, G. C. DISCUSSED.

SYLLABUS:

Under the provisions of Section 13435-3, General Code, a magistrate must accept the offer of only one surety on a bond if the surety is a resident of the county in which the prosecution is pending and owns real property worth double the sum to be secured over and above all incumbrances and has property in this state liable to execution equal to that amount.

COLUMBUS, OHIO, January 15, 1935.

HON. ERNEST L. WOLFF, *Prosecuting Attorney, Norwalk, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“At the request of a justice of the peace in this county I am making the following inquiry.

The first part of Section 13435-3, G. C. reads, ‘One surety in each recognizance must be a resident of the county in which the prosecution is pending, and the sureties must own real property, etc.’

The question is: Must a magistrate accept the offer of only one surety on a bond under this section or must there be two or more sureties?”

Section 13435-3, General Code, referred to in your letter reads in full as follows:

“One surety in each recognizance must be a resident of the county in which the prosecution is pending, and the sureties must own real property worth double the sum to be secured, over and above all incumbrances and have property in this state liable to execution equal to that amount.

When two or more sureties are offered on the same recognizance, they must have in the aggregate, the qualifications prescribed in this section. Such sureties, may be required to exhibit to the judge or officer taking the recognizance, satisfactory evidence of ownership of such real property; provided, however, that the judge or magistrate, as the case may be, shall have authority to accept as sole surety on any such recognizance, a surety company authorized to do business in this state, and provided further, that said judge or magistrate shall have authority to accept cash, liberty bonds or other bonds of the United States or of the State of Ohio, or any subdivision thereof or a certificate of deposit of a financial institution authorized to do business in the state of Ohio, in an amount equal to said bond, in lieu of a real property bond.”

I assume that you do not refer to a situation where a surety company is acting as surety, since it is clear from the language of the above section that one surety company may act as surety for a person charged with a criminal offense. On the contrary, I presume you have in mind a situation where a recognizance is offered, the sureties on which qualify as real property owners. The difficulty arises by virtue of the fact that the statute makes use of the word “sureties.” This might indicate that the Legislature intended that in all cases there must be more than one surety regardless of the

amount of real property one individual surety might own. Such a construction does not seem reasonable in view of the fact that Section 13435-3, General Code, supra, provides that "when two or more sureties are offered on the same recognizance, they must have in the aggregate, the qualifications prescribed in this section." This language would tend to indicate that one surety would be sufficient and that if two or more sureties are offered they must own real property between themselves equal to twice the amount to be secured over and above all incumbrances on the real property.

Likewise the same conclusion would be indicated by Section 13435-4, General Code, which reads in part as follows:

"When a recognizance is offered, the sureties on which qualify as real property owners, the judge or magistrate shall require such *surety or sureties* to pledge to the state of Ohio real property owned by the *surety or sureties*, and located in this state. Whenever such pledge of real property has been given by any such proposed surety, he shall execute the usual form of recognizance, and in addition thereto there shall be filed his affidavit of justification of suretyship, to be attached to said recognizance as a part thereof. The surety may be required in such affidavit to depose as to whether or not he is, at the time of executing the same, surety upon any other recognizance and as to whether or not there are any unsatisfied judgements or executions against him. He may also be required to state any other fact which the court deems relevant and material to a correct determination of the sureties' sufficiency to act as bail. Such *surety or sureties* shall state in such affidavit where notices provided for in this chapter may be served on himself, and service of notice of summons at such place shall be deemed sufficient service for all purposes. * * *" (Italics the writer's.)

Sections 13435-3 and 13435-4, General Code, were enacted in 113 O. L. 150 and being in pari materia must be construed together. The succeeding sections of the General Code relative to the subject of the bail make use of both the terms "surety" and "sureties," and this would tend to indicate that one surety, if otherwise qualified, would be sufficient to meet the requirements of Section 13435-3, General Code.

That the sections have reference to a justice of the peace is readily determined from the provisions of Section 13435-1, General Code, which section reads in part as follows:

"The provisions of this chapter relating to bail shall apply to all courts of record or magistrates so far as they are pertinent. * * *"

In view of the above and in specific answer to your question, it is my opinion that under the provisions of Section 13435-3, General Code, a magistrate must accept the offer of only one surety on a bond if the surety is a resident of the county in which the prosecution is pending and owns real property worth double the sum to be secured over and above all incumbrances and has property in this state liable to execution equal to that amount.

Respectfully,

JOHN W. BRICKER,
Attorney General.