

404.

BOND—TOWNSHIP CLERK—COVERS LIABILITY IN ISSUING HUNTING AND FISHING LICENSES.

*SYLLABUS:*

*The bond of a township clerk executed under the provisions of section 3300, General Code, covers said clerk's financial responsibility in issuing hunter's and trapper's and fishing licenses.*

COLUMBUS, OHIO, March 27, 1933.

HON. WILLIAM H. REINHART, *Commissioner of Conservation, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“Section 1432 of the General Code of Ohio says in part:

‘Hunter’s and Trapper’s licenses shall be issued by the clerk of common pleas court, village and township clerks. Whenever the township clerk deems it advisable, he may designate one or more deputies in his township to distribute hunter’s and trapper’s licenses. Before issuing such licenses, the deputy shall be required to deposit with the township clerk, either a personal bond of at least two hundred dollars with two sureties thereon, approved by the township clerk, or a corporate surety bond of at least the same amount which security shall be conditioned on the proper performance of his duties. \* \* \*’

Section 1430 which has to do with the issuing of fishing licenses reads:

‘Said licenses shall be procured in the manner provided for taking out hunter’s and trapper’s licenses. \* \* \*’

Section 3300 reads:

‘Before entering upon the discharge of his duties, the township clerk shall give bond payable to the trustees, with sureties approved by them in such form as they determine, conditioned on the faithful performance of his duties as clerk. Such bonds shall be recorded by the clerk, filed with the county treasurer and carefully preserved.’

About three years ago a personal opinion was given to this division that the bonds of the township clerks given in compliance with Section 3300 governed all their financial transactions of which the issuing of hunting and fishing licenses was one.

Since Section 1430 and 1432 in using the words ‘licenses shall be issued’ makes it a duty, we have been governed accordingly in the handling of our accounts since that time. But now since there is some question raised and the security of thousands and thousands of dollars in our accounts is at stake, I shall be very grateful to have you render your opinion on this subject at your very earliest opportunity that we may take whatever steps are necessary in accordance with it to protect ourselves with proper surety.”

Section 3300, General Code, which you quote in your communication, states that the township clerk shall give bond “conditioned for the faithful performance

of his duties as clerk." This statute was originally part of an act passed by the legislature on March 28, 1859 (56 O. L. 78) reading as follows:

"AN ACT

Requiring township clerks to give bonds.

Section 1. Be it enacted by the General Assembly of the State of Ohio, That each and every person, elected and qualified to the office of township clerk shall, previously to entering on the duties of his office, give bond, with at least two good sureties, to the trustees of such township, and their successors in office, in such sum as the trustees may deem proper, conditioned for the faithful performance of his duties by virtue of said office; which bond shall be lodged with the treasurer of the township; and if the said bonds, or any of them, shall become forfeited, the township treasurer, by order of the trustees, is hereby authorized and required to sue for and collect the same, for the use of the township.

Section 2. This act shall be in force from and after the first Monday of April, 1859."

When there occurred a codification of the existing statutes in 1880, section 1 of the above act became Revised Statutes 1501, providing:

"Before entering upon the discharge of his duties, the township clerk shall give bond, with sureties approved by the trustees, in such sum as they determine, payable to them, and conditioned for the faithful performance of his duties as clerk; and said bond shall be recorded by the clerk, and filed with the township treasurer and carefully preserved."

When the present General Code was adopted in 1910, Revised Statutes 1501 became 3300, General Code, reading as follows:

"Before entering upon the discharge of his duties, the township clerk shall give bond payable to the trustees with sureties approved by them, in such sum as they determine, conditioned for the faithful performance of his duties as clerk. Such bond shall be recorded by the clerk, filed with the township treasurer and carefully preserved."

While section 3300, General Code, as adopted in 1910, was amended in 1923 (110 O. L. 31) the only change made by the amendment was the substitution of the word "county" for the word "township" before the word "treasurer" in the last sentence.

From the history of section 3300, General Code, it will be noted that since 1859 the township clerk has been required to give a bond conditioned for the faithful performance of the duties "of his office", or "as clerk."

At the time present section 3300, General Code, was originally enacted (56 O. L. 78, effective April 4, 1859), the duties of the office of township clerk, as set forth in the statutes, did not include a duty to issue hunter's and trapper's licenses or fishing licenses. It was not until 1913, by section 2 of an act passed on April 28, 1913 (codified as section 1422, General Code), effective July 27, 1913 (103 O. L. 717), that the legislature provided that township clerks shall issue non-resident hunter's licenses, thereby making such a duty of the office of township

clerk. While section 1422 was amended in 1915 and 1917 (106 O. L. 171 and 107 O. L. 487), township clerks still retained the duty to issue hunting licenses. In 1919, section 1422 was repealed, but by section 42 of the same act (108 O. L. 577-605), passed May 10, 1919, effective September 4, 1919, it was provided that township clerks should issue non-resident and resident trapper's licenses as well as non-resident and resident hunter's licenses. See section 1432, General Code (108 O. L. Pt. 1, 595). While section 1432 has since been amended (113 O. L. 578), the amendment did not affect the duty of a township clerk to issue hunter's and trapper's licenses.

Section 1430 of the General Code, which you also quote in part in your letter, was enacted on April 14, 1919 (108 O. L. Pt. 1, page 923), effective September 30, 1919, to provide for a fishing license for non-residents who desired to fish in Ohio. Said enacted section provided in the second sentence that "said license shall be procured in the manner provided for taking out hunter's and trapper's licenses." Thus it became the duty of the township clerk to issue non-resident fishing licenses on and after September 30, 1919. Section 1430, General Code, was amended in an act passed on March 25, 1925, effective June 23, 1925 (111 O. L. 276, 277), to provide for the issuing of fishing licenses for residents of Ohio.

It is therefore apparent that the additional duty of issuing hunter's and trapper's licenses and fishing licenses was placed on the township clerk long after the statute providing for the bond of the township clerk was enacted.

However, it has been held that an official bond of an officer covers duties imposed on his office before said bond was given, although such duties may have been added after the enactment of the law which prescribes the terms of the bond. In the recent case of *Hurlebaus vs. American Falls Reservoir District*, 49 Idaho, 158; 286 Pac., 598, decided April 1, 1930, it was held as disclosed by the third paragraph of the syllabus:

"In absence of statute, where an added duty of official nature is lawfully imposed on an official and no additional bond is provided, conditions of official bond, given thereafter, cover added duties."

A reference to page 168 of the opinion shows that the court cites in support of this statement of the law the following authorities:

"*Murfree on Official Bonds*, sec. 81, p. 58; *Throop on Public Officers*, sec. 236, p. 253; *Aetna Casualty & Surety Co. vs. Young*, 107 Okl., 231 Pac. 261; *Van Valkenbergh vs. Mayor*, 47 N. J. L. 145; *Town of Redwood City vs. Grimmenstein*, 68 Cal., 512, 9 Pac., 560; *City of Oakland vs. Snow*, 145 Cal. 419, 78 Pac. 1060; and *State vs. Matthews*, 57 Miss. 1."

It is stated in *Murfree on Official Bonds*, Section 81, pages 58, 59, as follows:

"It has been questioned whether the liability of the obligors of an official bond is affected by statutes enacted after the execution of the bond; it is certainly true that an official bond covers whatever duties were imposed before it was given, although such duties may have been added after the enactment of the law which prescribed the terms of the bond. Thus, a county treasurer's bond, requiring him to receive and ac-

count for 'all moneys which shall come to his hands, as treasurer,' imposed upon him liability for the proceeds of a tax, which the county held as trustee for the townships and other subordinate municipalities of the county. The court said: 'The fact that the tax on the liquor traffic was for the time imposed after this statute, which fixed the condition of the treasurer's bond was passed, is of no moment; the tax was provided for before this bond was given, and the sureties must be supposed to have had in view, when they signed the bond, all duties which existing statutes imposed on their principal.' Citing *Marquette County vs. Ward*, 50 Michigan, 174, 177. And in North Carolina it is the law that, where a statute requires a bond from an officer for the faithful discharge of his duties, and a new duty is afterwards attached to the office by statute, such bond given *subsequently* to the latter statute embraces the new duty, and is a security for its performance. This is undoubtedly the rule, unless the statute requiring the new duty, itself prescribes the bond or other security, necessary to secure the performance of the new duty. Citing—*State vs. Bradshaw*, 10 Ired. L. (N. C. 229, 232); *Cameron vs. Campbell*, 3 Hawks, 285; *Grumpler vs. Governor*, 1 Dev. 52; *Governor vs. Barr*, 1 Dev. 65, *Governor vs. Mallock*, 1 Dev. 213."

Obviously, the legislature must have intended that the bond of the township clerk given under section 3300, General Code, would cover the duties of issuing hunter's and trapper's licenses and fishing licenses, for no additional bond was required when these new duties were added to the office. It may be further observed that at the time township clerks were originally given the duty to issue these licenses in 1919, there was no provision for authorizing deputy township clerks to issue said licenses. In 1925 section 1432, General Code, was amended to permit deputy township clerks to issue licenses, but only after giving bond which was provided for in the same section. Surely the legislature would not have provided for bonding deputy township clerks covering their duties of issuing licenses, without having bonded the township clerks covering the issuance of such licenses. This seems to me to be an additional argument that the legislature considered that the bond provided for under section 3300, General Code, covered the additional duties imposed on the office of township clerk of issuing hunter's and trapper's licenses and fishing licenses.

That the condition of the bond provided for under section 3300 is broad enough to cover all financial transactions of the township clerk may not be doubted. It was held in the third paragraph of the syllabus in the case of *Seward vs. Surety Co.*, 120 O. S. 47, as follows:

"The official bond given by a postmaster, with surety, obligating him to faithfully perform all the duties of the office to which he has been appointed, embraces the duty to account for and disburse the moneys that have come into his hands according to law."

On page 49 of the opinion of the above case, it is stated:

"It has been the general policy, not only with government employees and appointees, but with state officers, county officers, *township officers*, and all other public officials, to hold the public official accountable for the moneys that come into his hands as such official, and his obligation

has been held to be as broad as is the obligation of a common carrier of freight received for shipment; that is to say, that when he comes to account for the money received, it must be accounted for and paid over, unless payment by the official is prevented by an act of God or a public enemy; and burglary and larceny and the destruction by fire, or any other such reason, have not been accepted by the courts as a defense against a claim for the lost money. The decisions to this effect are so uniform and so numerous that no useful purpose would be served by restating the law that has been so many times stated so clearly. It is found in the textbooks on the subject, and in the decisions from practically all the states." (Italics the writer's.)

Since the bond of the township clerk is conditioned just as the bond of the official in the above case, it seems clear that the bondsmen of the township clerks are liable for the township clerks' financial responsibility in issuing hunter's and trapper's and fishing licenses.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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405.

APPROVAL, NOTES OF WELLSTON CITY SCHOOL DISTRICT, JACKSON COUNTY, OHIO, \$13,371.00.

COLUMBUS, OHIO, March 27, 1933.

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

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406.

APPROVAL, NOTES OF SHADYSIDE EXEMPTED VILLAGE SCHOOL DISTRICT, BELMONT COUNTY, OHIO, \$14,931.00.

COLUMBUS, OHIO, March 27, 1933.

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

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407.

APPROVAL, NOTES OF SALEM LIBERTY RURAL SCHOOL DISTRICT, WASHINGTON COUNTY, OHIO, \$7,946.00.

COLUMBUS, OHIO, March 27, 1933.

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