

OPINION NO. 72-005**Syllabus:**

The Adjutant General's discretion to refuse a firearm permit under Section 2923.04, Revised Code, is not so broad as to enable him to require the submission of a corporate surety bond prior to granting the permit, but it is broad enough to enable him to refuse to accept any bond which, in his judgment, does not meet the statutory requirements.

To: Dana L. Stewart, Adjutant General, Columbus, Ohio
By: William J. Brown, Attorney General, January 25, 1972

I have before me your request for my opinion, in which the question may be paraphrased as follows:

May the Adjutant General, in exercising his statutory discretion in approving bonds pursuant to Section 2923.04, Revised Code, accept only corporate surety bonds?

Section 2923.04, Revised Code, which requires a permit and a bond approved by the Adjutant General for the possession of specified firearms, reads in pertinent part as follows:

"No person shall own, possess, transport, have custody of, or use a shotgun with barrel less than eighteen inches in length, or rifle with a barrel of less than sixteen inches in length, or shotgun or rifle with an overall length of less than twenty-six inches, or machine gun, light machine gun or submachine gun, unless he first procures a permit therefor from and at the discretion of the adjutant general, * * *. Before obtaining such permit each applicant shall give bond to this state, to be approved by the adjutant general, in the sum of five thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapon while under the control of such applicant or under the control of another with his consent; and any person

injured by such improper use may have recourse on said bond. * * *

My predecessor, in Opinion No. 69-020, Opinions of the Attorney General for 1969, concluded that:

"[T]he bond required to be given pursuant to Section 2923.04, supra, may be either a corporate surety bond or a personal surety bond, and the adjutant general may accept either type, provided that the particular bond tendered in each case is satisfactory to him." (Emphasis added.)

This Opinion examines at length the judicial history of surety bonds in Ohio, and it rests upon settled judicial doctrine that a statutory restriction limiting acceptable bonds to corporate surety bonds traverses the right to liberty of contract protected by Article I, Section 1 of the Ohio Constitution. State ex rel. McKell v. Robins, 71 Ohio St. 273, 291-293 (1905); State ex rel. Barr v. Deckenbach, 105 Ohio St. 543 (1922). Since it has been held that the legislature does not have the constitutional authority to prescribe corporate sureties, it follows that an administrative officer lacks the power to reject arbitrarily any personal surety bond without consideration of the circumstances.

Accordingly, the considerable discretion given to the Adjutant General by Section 2923.04, supra, relates to the particular bond viewed in the light of the circumstances of the particular case. An administrator may, of course, reject sureties which, in his judgment, do not meet the statutory requirements. But it would be improper, in view of the authorities in Opinion No. 69-020, supra, to refuse flatly to accept any personal surety bond regardless of the circumstances.

In specific answer to your question it is my opinion, and you are so advised, that the Adjutant General's discretion to refuse a firearm permit under Section 2923.04, Revised Code, is not so broad as to enable him to require the submission of a corporate surety bond prior to granting the permit, but it is broad enough to enable him to refuse to accept any bond which, in his judgment, does not meet the statutory requirements.