

1431.

SURETY—NOTARY PUBLIC'S BOND—RELEASED ONLY BY DEATH, EXPIRATION OF TERM OR REMOVAL FROM OFFICE OF NOTARY PUBLIC.

*SYLLABUS:*

*A surety on a notary public's bond is released only by the death, expiration of term or removal from office of the notary public.*

COLUMBUS, OHIO, November 15, 1939.

HON. JOHN W. BRICKER, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR: This will acknowledge receipt of your request for my opinion as to whether or not a surety on a notary public bond can be released, and if so, what is the procedure required.

Notaries are appointed by the Governor by virtue of authority contained in section 119, General Code. They are required to be citizens of this state, of the age of twenty-one years or over, and residents of the county for which they are appointed. The same section provides that the Governor may revoke a commission issued to a notary public upon presentation of satisfactory evidence of official misconduct or incapacity.

Notaries are appointed to hold office for a term of three years and each must give bond in the sum of fifteen hundred dollars before entering upon his duties. The provisions therefor are found in section 122, General Code, which is as follows:

"Each notary shall hold his office for the term of three years unless his commission shall be revoked. Before entering upon the duties of his office, he shall give bond to the state in the sum of fifteen hundred dollars with sureties approved by the governor, conditioned for the faithful discharge of the duties of his office."

A reasonable interpretation of these sections implies that upon revocation of the notary's commission by the Governor the surety on the notary's bond would thereupon be released from any further or subsequent liability.

Obviously, death of the notary ends his activity, and the commission being of a personal nature it is thus terminated. His official register as provided by section 123, General Code, must be turned over to the recorder of the county in which he resided. Clearly, his surety would be thus automatically released from any further liability upon the bond. The death of the surety does not act as a discharge of the surety, for

the obligation then becomes an obligation of his estate for the balance of the term. This rule is substantiated by the statement in 38 O. Jur. 579, section 205, wherein it is stated:

“Nor does the death of the surety on a bond or undertaking discharge his liability on the obligation; his estate continues liable after his death, and that liability cannot be terminated by mere notice by his personal representative that he will no longer be bound.”

Also touching on the same rule, the following statement is made in 31 R. C. L. 982, section 31:

“The death of a surety on a bond conditioned to perform an act within a certain definite period, or before notice to the obligee of withdrawal therefrom, does not terminate his liability, and his personal representatives will be responsible, especially where the surety binds himself, his heirs, executors, and administrators. It is also a general rule that the death of a surety on an obligation conditioned for the integrity of a person during a certain period or for the faithful performance of the duties of an officer for the term during which the principal is to hold office does not discharge the obligation, unless it is expressly so stipulated in the bond, but the estate of the surety continues liable thereon after his decease.”

In addition to being subject to having his commission revoked for official misconduct or incapacity, a notary may be removed from office by the common pleas court for charging excessive fees and certifying to affidavits without administering an oath or affirmation, provisions therefor being made in the following sections of the General Code:

*Section 131.*

“A notary public who charges or receives for an act or service done or rendered by him a fee or reward greater than the amount prescribed by law, or who dishonestly or unfaithfully discharges any of his duties as notary public, shall be removed from his office by the court of common pleas of the county in which he resides, upon complaint filed and substantiated in such court, and the court shall thereupon certify such removal to the governor. The person so removed shall be ineligible for reappointment to the office of notary public.”

*Section 131-1.*

“Whoever being a notary public certifies to the affidavit of a person without administering the oath or affirmation to such person is guilty of a misdemeanor and shall be fined not more than one hundred dollars or imprisoned not more than thirty days, or both, and removed from office by the court of common pleas of the county in which the conviction was had. The court shall thereupon certify such removal to the governor. The person so removed shall be ineligible to reappointment for a period of three years.”

Removal from office as provided in the above sections would, of course, release the surety as effectively as would revocation of the notary's commission by the Governor.

The insolvency or liquidation of a surety company bound on the bond of the notary public would not of itself release such surety, but, as pointed out in the Opinions of the Attorney General, 1931, Volume I, 375, the commission of the notary would thereupon be subject to revocation, unless, upon demand, a supplemental bond with approved surety is filed.

On the point, it is said in 21 R. C. L. 1064, section 106:

“It has also been laid down as a general rule that the giving of new securities by an officer for the performance of his official duties does not discharge his sureties from future responsibility for his acts unless the law which requires the taking of new sureties declares in terms or by just construction that they shall be so discharged.”

A surety on the bond of a county officer is empowered by section 12195, General Code, to give five days' written notice to the county commissioners of his unwillingness to so continue as surety. At a hearing thereafter had, if the commissioners are of the opinion that there is good reason for the release of the surety, the county officer must furnish a new bond or his office will be deemed vacant. This procedure, however, applies to the several elected county officers whose bonds are originally presented to and approved by the county commissioners. Notaries' bonds are submitted to and approved by the Governor and the bonds thereafter filed in the office of the Secretary of State. No similar provision is made for the release of a surety on the bond of a notary public. The appointment of the notary is for a period of three years and the bond furnished at the time of his qualification is for the same period.

The conditions under which a surety may secure a release from his bond are set forth in the opinion in the case of *Nat'l. Insurance Co. v. Meyer*, 21 O. App., 385, wherein it is said:

“A surety may revoke and end his liability, either where the guaranty contract has no definite time to run, or where it has such time, but the principal has so violated it, that the bondsmen may lawfully terminate it on account of the breach. Cases to this effect are *La Rose v. Logansport Nat. Bank*, 102 Ind., 332, 1 N. E., 805; *Emery v. Baltz*, 94 N. Y., 408; *Singer Mfg. Co. v. Draughan*, 121 N. C., 88, 28 S. E., 136, 61 Am. St. Rep., 657; *White Sewing Mach. Co. v. Courtney*, 141 Cal., 674, 75 P., 296, and many other cases.”

By virtue of section 122, supra, notaries are commissioned for a period of three years. The form of the bond used clearly indicates that it is given to assure the faithful discharge of the duties of the notary. These duties start with the appointment and qualification and continue for the duration of his commission.

Therefore, since there is no provision for the surety to request a termination of his liability under the bond, I am of the opinion that a surety on a notary public's bond is released only by the death, expiration of term or removal from office of the notary public.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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1432.

MOTOR VEHICLE LICENSE TAX—WEIGHT OF SIDE BOARDS  
ATTACHED TO TRUCK — WHETHER USE PERMANENT  
OR TEMPORARY — SHOULD BE INCLUDED TO DETER-  
MINE AMOUNT OF SUCH TAX.

*SYLLABUS:*

*The weight of side boards attached to a truck should be included in determining the amount of the motor vehicle license tax whether such side boards are used permanently or temporarily.*

COLUMBUS, OHIO, November 15, 1939.

HON. CYLON W. WALLACE, *Registrar, Bureau of Motor Vehicles, Columbus, Ohio.*

DEAR SIR: Your request for my opinion reads in part as follows:

“Calling your attention to the provisions of Section 6293 G. C. as amended by the last legislature (House Bill number 94), your opinion is requested as to the status of ‘side boards’ attached