

3104.

SURETY BONDS—OFFICERS AND EMPLOYEES OF BUILDING AND
LOAN ASSOCIATIONS—SPECIFIC “BANKERS BLANKET BOND”
AND “POSITION SCHEDULE BOND” DISAPPROVED.

SYLLABUS:

Proposed “bankers’ blanket bond” and “position schedule bond” do not comply with the requirements of Section 9670, General Code, and the same are therefore disapproved.

COLUMBUS, OHIO, January 5, 1929.

HON. J. W. TANNEHILL, *Superintendent, Building & Loan Associations, Columbus, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication which reads:

“Section 9670 of the General Code requires that—

‘All officers and employes of building and loan associations having control or access to moneys or securities of such association in the regular discharge of their duties before entering upon their duties, shall give bond with two or more responsible freeholders or a surety company qualified to transact business in the State of Ohio, as surety thereon.’

A short time ago there was presented to us for consideration a surety company bond designated as ‘position schedule bond’ as per copy enclosed herewith.

In connection with this form of bond the Department took the position that due to the fact that it did not make specific designation as to the bonding of the officer or employe covered thereunder, such form was not acceptable under the provisions above referred to, as in that form of bond the *office* only is referred to.

We also enclose a copy of Bankers’ Blanket Bond and call your attention particularly to Section 6 thereof, from which you will see that this form of bond does not contain the names of any specific officers or employes.

Will you please advise whether or not, under the section of law above referred to, the use of either of the forms submitted would be proper? If not, are we correct in assuming that the position schedule bond does not comply with Section 9670 and at the same time taking the position that the blanket bond does constitute compliance with the law so far as building and loan associations are concerned?”

Without setting out in detail the provisions of the so-called “position schedule bond” submitted with your communication, it is sufficient to say that by the terms thereof the surety company binds itself to pay to the insured, called the employer, such pecuniary loss as the employer may sustain of money or other personal property by any acts of fraud, dishonesty, forgery, theft, embezzlement, misappropriation or wrongful abstraction, directly or through connivance with others, on the part of any of the employees named in the schedule attached to the bond during the life of the same. The instrument contains the provision that losses covered by the bond must be discovered during the incumbency of the employee or within two

years after the incumbency terminates and notice must be given to the company within ten days after discovery. The bond is signed on behalf of the bonding company by certain officers thereof.

In the "bankers' blanket bond" the surety company agrees to indemnify the insured against direct loss sustained during the time the bond is in force in an amount not exceeding a stipulated sum arising through any dishonest act, wherever committed, of any of the employees of the insured, whether acting alone or in collusion with others, or through robbery, burglary, larceny, theft, hold-up or destruction, while the property is within any of the offices of the insured or within the premises of any of the insured's correspondent banks, or while in transit within the United States but within fifty miles of any of the insured's offices, etc. Section 6 of the bond defines the word "employees" to mean officers, clerks and other persons in the immediate employ of the insured during the currency of the bond but not to mean any person or persons employed by any other banking institution which the insured shall have taken over unless the underwriter shall have given its consent thereto. The latter bond is signed on behalf of the surety company by certain of its officers.

Section 9670, General Code, a portion of which is quoted in your communication, contains certain provisions which you have not quoted but which are deemed pertinent to the question you present. The pertinent part of Section 9670, General Code, reads as follows:

" * * * All officers and employees of building and loan associations having control or access to moneys or securities of such association in the regular discharge of their duties before entering upon their duties, shall give bond with two or more responsible freeholders or a surety company qualified to transact business in the State of Ohio, as surety thereon; such bond shall guarantee the faithful performance of duty on the part of said officers and employees, and the safe keeping and proper application of all moneys or property coming into their hands. All officers of such corporation on being re-elected to office shall renew their bonds. The amount and form of said bond and sufficiency of the surety thereon shall be approved by the board of directors, which form shall be substantially that prescribed by the superintendent of building and loan associations. If the sureties on such bonds are individuals, then each individual signing such bond shall make oath that he is the owner in fee simple of unincumbered real estate, the actual value of which is not less than double the amount of such bond.

Directors of building and loan associations to which bond is given shall not be eligible as bondsmen on such bonds but shall be individually liable for any loss to members, caused by their neglect to comply with the provisions of this section or any other provisions of law prescribing their duties, or the duties imposed upon them by the constitution and by-laws of such association, and the superintendent of building and loan associations may at any time require additional bond or security when, in his opinion, any such bond then in force is insufficient."

Section 9670 provides that all officers and employees of building and loan associations having control or access to moneys or securities of the association before entering upon their duties shall give a bond with two or more responsible freeholders or a surety company qualified to transact business in Ohio as surety thereon. The common conception of a bond such as is mentioned in Section 9670 is an instrument guaranteeing the performance of certain duties or against loss resulting

through nonfeasance or misfeasance, signed personally by the principal as well as by the surety or sureties. The proposed bankers' blanket bond and position schedule bond, above referred to, are not bonds in the sense of the term as used in the statute. They are nothing more or less than policies of insurance to indemnify the insured against loss resulting through certain contingencies. I can see no objection to a building and loan association protecting itself against loss by making a contract of insurance such as is covered by the above "bonds". However, your attention is directed to the portion of Section 9670, above quoted, which provides that the directors of a building and loan association shall be individually liable for any loss to members caused by their neglect to comply with the provisions of this section. While the proposed bonds purport to insure the building and loan association against losses resulting from a great many contingencies, it is entirely possible that losses may occur which are not covered thereby. In such event, clearly the directors of the building and loan association would be individually liable for any loss caused by their failure to require the officers and employees of the association to give the bond required by Section 9670, General Code.

In view of the foregoing and answering your question specifically, I am of the opinion that the position schedule bond and the bankers' blanket bond, above referred to, are not such bonds as are prescribed by Section 9670, General Code, and that the directors of a building and loan association who enter into a contract with a surety company under the terms of such bonds are individually liable for losses which may occur and which are not covered by such bonds.

Respectfully,
 EDWARD C. TURNER,
Attorney General.

3105.

REAL ESTATE BROKER'S LICENSE—CORPORATION'S APPLICATION
 MUST CONTAIN NAME OF PRESIDENT—EXAMINATION OF ANY
 OFFICER—WHEN LICENSE TO ISSUE.

SYLLABUS:

Where a corporation makes application for a license as a real estate broker, the name of the president of the corporation must appear in the application, but such president need not pass the examination and a license shall issue to the corporation in the event that any officer named in the application is successful in passing the examination.

COLUMBUS, OHIO, January 5, 1929.

State Board of Real Estate Examiners, Rowlands Bldg., Columbus, Ohio.

GENTLEMEN:—This will acknowledge the receipt of your recent communication, as follows:

"At a meeting of this Board December 18, 1928, the following resolution was passed: