

and rear wheels within one foot of the right hand side of the improved portion of the road," because preceding the words "in any such way" there is no other way described in the statute that a vehicle may stop upon the highway. "Such" is defined in Webster's International Dictionary as meaning "like" or "similar". Therefore, if a vehicle stops on a highway in a manner described in the statute, so as to obstruct free passage of the highway, it is a violation of this section.

I am of the opinion that the Legislature did not intend to prohibit a vehicle from stopping on the highway, for it prescribed the manner in which it should stop, but it did intend to prohibit the stopping of the vehicle upon the highway in any manner which would obstruct the free passage of the highway.

The stopping of a vehicle on a highway with rear and front right wheels one foot from the edge of the improved highway does not except the person from a violation of this section unless the circumstances are such in each particular case that such stopping does not obstruct free passage of the highway.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

301.

SURETY BOND—SECURING SCHOOL MONEYS IN DEPOSITORY BANK—  
DEFAULT OF PRINCIPAL—SUIT AGAINST DECEASED SURETY'S  
ESTATE BEFORE SURVIVING OBLIGORS UNNECESSARY.

SYLLABUS:

*Whether the obligation of a bond taken by the board of education of a school district to secure it in the deposit of school moneys in a depository bank is joint or joint and several in its obligation as to the principal and sureties thereon, it is not necessary for such board of education, on default of the depository bank, to institute an action against the estate of a deceased surety on the bond before proceeding against the surviving obligors to recover the amount due on such bond.*

COLUMBUS, OHIO, April 13, 1929.

HON. CHARLES T. STAHL, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads in part as follows:

"I would like to have your opinion on the following matter:

The Stryker public schools of Stryker, Ohio, including the surrounding territory, had a certain amount of money deposited in the old State Exchange Bank of Stryker, now under liquidation; and to secure the same the directors of said bank signed the bond.

Arrangements were made whereby the seven bondsmen were to take care of their equal shares and six of them paid in when a Mr. J., the other bondsman, died suddenly and his share was never paid.

My opinion to the board of education of said school was to the extent that the remaining six bondsmen would have to take care of the share of Mr. J. and if not we could proceed against them in court.

I think that Mr. J. left some estate and the board wants to know, as well

as myself, if it is necessary to sue the estate first, which I most assuredly do not think we have to do."

In the consideration of the question presented in your communication I assume that the bond here in question is one given under the provisions of Section 7605 or 7607, General Code, and that the board of education of the Stryker school district is the named obligee therein. It is not stated in the communication whether under the terms of said bond the obligation of the principal and the sureties thereon is joint or joint and several. If, under the terms and provisions of this bond, the obligation of the principal and sureties is joint and several, the answer to your question is determined by the provisions of Section 11258, General Code, which reads as follows:

"One or more of the persons severally liable on an instrument may be included in the same action thereon."

Under the provisions of this section, if the obligation and the principal and sureties on the bond is several as well as joint, action may be brought against one or more of the surviving obligors, without reference to the fact that one of the obligors on said bond is dead.

If, on the other hand, the obligation of this bond as to the principal and sureties thereon is joint, and not joint and several, the answer to the question here presented is determined by the provisions of Section 10733, General Code. This section reads as follows:

"When two or more persons are indebted in a joint contract, or upon a judgment founded on it, and either of them dies, his estate shall be liable therefor as if the contract has been joint and several, or as if the judgment had been against himself alone."

The effect of the section of the General Code above quoted is to render the joint obligation joint and several with respect to the legal representative and estate of a deceased joint obligor on the bond, leaving the obligation joint as to the surviving obligors on the instrument. In such case the obligee named in the bond, may at his election, join the administrator or other legal representatives of the deceased obligor as a party defendant with the surviving obligors, but is not required to do so.

See *Burgoyne vs. Ohio Life Insurance & Trust Company*, 5 O. S. 586;

*Weil vs. Guerin*, 42 O. S. 299, 302.

By way of specific answer to the question made in your communication, therefore, I am of the opinion that whether the obligation of the bond here in question is joint or joint and several as to the principal and sureties thereon, it will not be necessary for the board of education of Stryker school district to bring an action against the estate of the deceased surety before proceeding against the surviving obligors to cover the amount remaining due on said bond.

No facts are stated in your communication to indicate that the payment made on this bond by the surviving sureties were made by way of compromise of their indebtedness under the provisions of Section 8084, General Code, and no opinion is here expressed with respect to the application of the provisions of this section to a case such as is here presented.

Respectfully,

GILBERT BETTMAN,

Attorney General.