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1. CORONER—AUTHORIZED TO APPOINT ONE OR MORE ASSISTANT CORONERS—BOND MAY BE FILED FOR FAITHFUL PERFORMANCE OF DUTIES—PREMIUM CHARGED BY SURETY COMPANY MAY BE PAID OUT OF COUNTY TREASURY—SECTIONS 9, 9573-1 G. C.
2. BONDS FILED BY ASSISTANTS TO CORONER MAY BE MADE PAYABLE TO STATE OR TO CORONER.

SYLLABUS:

1. Under the provisions of Section 2855-17, General Code, a coroner is authorized to appoint one or more assistant coroners, and under the provisions of Section 9 of the General Code, he may take from each of said assistants a bond conditioned for the faithful performance of the duties of said deputy, and may cause the expense of the premium of said bond if signed by a surety company, to be paid out of the county treasury pursuant to the provisions of Section 9573-1, General Code.

2. Bonds given by the assistants to the coroner may be made payable either to the State of Ohio or to the coroner himself.

Columbus, Ohio, April 16, 1948

Hon. Ralph J. Bartlett, Prosecuting Attorney
Franklin County, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"The coroner of this county has requested an opinion of my office as to whether the county is obligated to pay the bond for the assistant coroners.

"I have reviewed the authorities on this subject, including an opinion of the Attorney General in 1944, page 280, No. 6939, which was to the effect that the trustees of a county hospital have no authority to pay out of public funds at their disposal, the premium on a bond given to secure the faithful performance of their duties by employees of said hospital. In the course of the opinion, on page 282, your predecessor states in effect that Section 9 of the General Code has no bearing on the question as that provision is a matter strictly between the principal and his deputy, and is for the protection of the principal who is, by the statute, made responsible for the neglect or misconduct of his deputy. However, in the case of Edmundson, Auditor vs. State, ex rel., American Guaranty Company, 10 Ohio Law Abstract, page 150, it was held as follows:

'In an action by a surety company against a county auditor, to recover the premiums due on bonds for deputy sheriffs, it is no defense that the appointments of the deputy sheriffs were irregular because of noncompliance with section 2830, General Code'

"In the course of his opinion in the foregoing case P. J. Mauck says on page 151:

'The fifth paragraph was that the bonds were not payable to the state. The answer is that the statute does not require them to be. Section 9, General Code. The sixth paragraph is that the bonds were given for the protection of the sheriff and not the public. How far this is true in fact we need not determine. The statute authorizes the bond. Section 9, General Code. Another statute requires the payment of the premium by the county. Section 9573-1, General Code.'

"This opinion was rendered in 1931 but the previous rulings of the Attorney General do not appear to have given it any consideration.

“Inasmuch as this would appear to be a matter of general interest throughout the state, I am requesting an opinion from you as to whether the County Commissioners are authorized under Section 9573-1, General Code, to pay the premium on the bonds for assistant coroners; and if so should such bonds be payable to the State or the Coroner.”

Section 2824, General Code, provides that within ten days after his election, the sheriff and coroner shall each give a bond signed by a bonding or surety company authorized to do business in this state, or at his option, by two or more freeholders. This section further provides :

“The expense or premium for such bond shall be paid by the county commissioners and charged to the general fund of the county.”

An examination of the statutes relative to the qualifications of each of the other elected county officers contains practically identical provisions to those just referred to. In each of these cases, the bond is to be given *to the state*.

Many other provisions may be found in the statutes authorizing bond to be required of officers, both elective and appointive. Among others, is the provision in Section 2524, General Code, relative to the superintendent of the county home, by which it is provided :

“Before entering upon his duties the superintendent shall give bond to the state in a sum not to exceed twenty thousand dollars and not less than two thousand dollars as the commissioners require, * * *”

Attention may also be called to Section 154-14, General Code, which authorizes the director of each of the state departments to require any officer or employe in his department to give bond, the premium to be paid from the state treasury.

Section 2981, General Code, which is a part of an act relating to the county auditor, county treasurer, probate judge, sheriff, clerk of courts, surveyor and recorder, authorizes each of said officers to appoint and employ the necessary deputies, clerks, bookkeepers or other employes for their respective offices and to require such of his employes as he deems proper to give bond to the state in an amount to be fixed by such officer. It will be noted that this section and the act of which it is a part, make no reference to the coroner or any deputies or assistants appointed by him.

We find in the statutes many other provisions for bonds of officers of political subdivisions. For instance, Section 3269, General Code, bonds of township trustees; Section 3300, township clerk; Section 3328, constables; Section 7627, clerk of library board; Section 4841-3, clerk of board of education. In view of these many explicit provisions of the statutes, it seems rather significant that no like provision appears as to any of the coroner's assistants.

A provision for appointment of assistants to the coroner is found in Section 2855-17, General Code, which reads in part as follows:

"The coroner may appoint in writing assistant coroners who shall be licensed physicians of good standing in their profession, one of whom may be designated as the chief deputy coroner, and pathologists, who shall assist in doing autopsies and making such pathological and chemical examinations and performing such other duties as may be required and directed by the county coroner or recommended by the county prosecuting attorney, and shall be known as assistant coroners, and the coroner may also appoint necessary technicians."

There is nothing in this section or in any other provision of law which requires these assistant coroners to give bond or which authorizes the coroner to require them to give such bond, unless it be Section 9, General Code, to which you refer in your letter. That section reads as follows:

"A deputy, when duly qualified, may perform all and singular the duties of his principal. A deputy or clerk, appointed in pursuance of law, shall hold the appointment only during the pleasure of the officer appointing him. The principal may take from his deputy or clerk a bond, with sureties, conditioned for the faithful performance of the duties of the appointment. In all cases the principal shall be answerable for the neglect or misconduct in office of his deputy or clerk."

It seems to me very significant that this section makes the principal answerable for the neglect or misconduct in office of his deputy or clerk, and in the same connection provides that the principal "may take" from his deputy or clerk a bond conditioned for the faithful performance of the duties of his appointment. It could very well be argued that such a bond is merely a personal indemnity designed to save the officer from loss due to the neglect or misconduct of his subordinate.

In the opinion of my immediate predecessor to which you refer, found in 1944 Opinions of the Attorney General, page 280, it was held as shown by the syllabus:

“The trustees of a county hospital have no authority to pay, out of public funds at their disposal, the premium on a bond given to secure the faithful performance of their duties by any of the employes of said board, excepting the bond of the superintendent of such hospital whose bond is provided for by section 3137 of the General Code, and which may be paid for out of such public funds by virtue of the provisions of Section 9573-1, General Code.”

The Attorney General based his opinion largely on the fact that there was no statute from which any authority could be drawn, to require a bond of the employes of a hospital board excepting the superintendent of such hospital. As to the superintendent's bond, which was authorized by Section 3137, General Code, he found authority in Section 9537-1, General Code, to pay the premium, but recognizing the well established principle that public boards and officers created by statute possess only such powers as may be conferred upon or delegated to them by statute or which are necessarily implied therefrom, he held that the hospital trustees were without authority to involve the public in an expenditure of public funds for which there was no statutory authority. His reference to Section 9, General Code, indicates that he regarded that section as having the effect above indicated, to wit, as providing for a personal indemnity to an officer against a possible default on the part of his deputy or clerk. He relied on an opinion found in 1935 Opinions of the Attorney General, page 549, where the Attorney General was asked by the Tax Commission the question:

“Will you please advise if we are authorized to require certain of our employees who handle some money—particularly in the excise tax section—to have surety bonds. If so, may the commission lawfully make an expenditure for this purpose out of its funds allotted for maintenance?”

His answer, as indicated by the syllabus, was as follows:

“There is no authority in the statutes at the present time for the bonding of employes engaged in the performance of duties for the Tax Commission of Ohio.”

It appears from the opinion that Section 154-14, General Code, which had been in force for a long time, as a part of the Administrative Code,

had authorized the heads of departments of state to require bond from their appointees, but that this section had been repealed, probably by mistake (113 O. L., 551). The Attorney General held that because there was then in force no statute authorizing such bonds, they could not be required. Shortly after this opinion was rendered the section was reenacted and is still in force as hereinbefore stated.

In the opinion last above referred to the Attorney General apparently did not consider Section 9 supra as having any bearing on the question, as he made no mention of it. That section as well as the sections preceding it and following it, which are part of the Revised Statutes of 1880, have not undergone any change in phraseology. Section 7 provides that a person elected or appointed to an office "who is required by law to give bond" and fails so to do, shall be deemed to have refused to accept the office. Section 8 provides that a person holding an office of public trust shall continue therein until his successor is elected or appointed and qualified. Those statutes were apparently intended to relate to *officers*, either elected or appointed, and it is questionable whether they or Section 9 apply to specially created boards and commissions such as hospital trustees and tax commission.

With the exception of one case to which reference will hereinafter be made, I have been unable to find any judicial construction of Section 9 supra, and in the light of the many provisions found in the statute expressly authorizing bonds to be required by certain officers and boards, of certain of their employes, I would be inclined to agree with what appears to have been the opinion of my predecessors regarding the scope and intent of Section 9. However, it is obvious that we must give some effect to the provisions of that section in its authorization of officers to take bonds from their deputies and clerks, because without such a provision, it seems plain that any officer would have a right to take such bond from his deputy or clerk if it was only intended for his personal protection and not for the protection of the public, and I shall therefore assume for the purpose of this opinion that it was the legislative intent to recognize such bonds, even though given to the officer as payee, as being for the protection of the public funds.

I come to the provisions of Section 9573-1, General Code, which reads as follows:

“The premium of any duly licensed surety company on the bond of any public officer, deputy or employe shall be allowed and paid by the state, county, township, municipality or other subdivision or board of education of which such person so giving such bond is such officer, deputy or employe.”

You will note the very general and sweeping language of this section. It covers the premium on the bond of “any public officer, deputy or employe”. It leaves no room for discrimination based on the name of the obligee, if we are right in assuming that the public is the real beneficiary entitled to recover on the bond.

You have directed my attention to the case of *Edmundson v. State, ex rel. American Guaranty Company*, 10 O. L. A., 150. In that case a suit was brought by the surety company against the county to recover the premiums on bonds which the sheriff had caused to be given to himself by several of his deputies. The decision was by the Court of Appeals of the 4th District. The court disposed of the case in the rather terse statement quoted in your letter. It appears to me that the decision might well have been based on Section 2981, General Code, to which I have called attention, under the terms of which the sheriff had a clear right to require a bond from his deputies, the cost of which would have been payable under the terms of Section 9573-1 *supra*, by the county. I am somewhat reluctant to agree with the holding of Judge Mauck in so far as he seemed to find the authority for such bond in Section 9, General Code, and to assume that bonds not required, but merely authorized by that section to be taken by the appointing officers, were within the purview of Section 9573-1, General Code.

However, I have great respect for the judgment of Judge Mauck, and in view of his decision and of what I know to be a long established administrative practice, I feel compelled to hold that the coroner referred to in your letter would be authorized to require a bond of his assistants and to cause the premium for such bond under the authority of Section 9573-1, General Code, to be paid out of the county treasury. While the two opinions of my predecessor, to which reference has been made, may seem to be slightly at variance with this conclusion in so far as they involve a construction of Section 9 *supra*, I do not feel that it is incumbent upon me to overrule either of those opinions, since each of them dealt with the class of officers and offices quite unrelated to the elective offices of a county and the appointees of such offices.

You have raised a second question, viz., whether bonds which a coroner may require of his assistants should be payable to the state or to the coroner himself. In an opinion found in 1945 Opinions of the Attorney General, page 1, I had under consideration Section 154-14, General Code, and held:

“Bonds of officers or employes in the department of public welfare in pursuance of Section 154-14, General Code, should be made payable to the State of Ohio.”

That section, to which reference has already been made, is silent as to the payee of bonds referred to therein, but it was pointed out in that opinion that a great many of the statutes authorizing or requiring bonds of officers and subordinates stipulate that they shall be made payable to the state.

Section 6, General Code, provides in part as follows:

“A bond payable to the state of Ohio, or other payee as may be directed by law, reciting the election or appointment of a person to an office or public trust under or in pursuance of the constitution or laws, and conditioned for the faithful performance, by such person, of the duties of the office or trust, shall be sufficient, notwithstanding any special provision made by law for the condition of such bond.”

Since many of the bonds to which reference has been made and which are required to be made to the state, covers officers or employes of subdivisions of the state, it appears to me that the General Assembly regards the state as acting in a representative capacity for the benefit of the subdivision or board directly interested. However, since I am unable to find any authority for the requirement of a bond even for the chief deputy of a coroner except Section 9 of the General Code, and since the Edmundson case above referred to, holds that a bond which an officer “may take” under Section 9, may be paid for out of public funds, it appears to me that it is a matter of indifference whether the bond of the chief deputy coroner be made to the state or to the coroner himself.

In specific answer to your questions it is my opinion:

1. Under the provisions of Section 2855-17, General Code, a coroner is authorized to appoint one or more assistant coroners, and under the provisions of Section 9 of the General Code, he may take from each of

said assistants a bond conditioned for the faithful performance of the duties of said deputy, and may cause the expense of the premium of said bond if signed by a surety company, to be paid out of the county treasury pursuant to the provisions of Section 9573-1, General Code.

2. Bonds given by the assistants to the coroner may be made payable either to the State of Ohio or to the coroner himself.

Respectfully,

HUGH S. JENKINS,
Attorney General.