

under the petition when they again view the proposed improvement the next year and unanimously pass a resolution declaring the necessity of improving a part of such road without including in such resolution any reference to the petition filed two years previous to the passage of such resolution.

2. There is no provision of law authorizing a board of county commissioners to cancel and set aside special assessments which have been previously levied to pay a part of the cost of a road improvement.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2119.

BLANKET BOND FORMS—COVERING OFFICERS AND EMPLOYES OF  
BUILDING AND LOAN ASSOCIATIONS—DISAPPROVED.

*SYLLABUS:*

*Disapproval of certain blanket forms of bonds, suggested as being proper for the Superintendent of Building and Loan Associations to prescribe for building and loan associations in bonding their officers and employes as required by Section 9670, General Code.*

COLUMBUS, OHIO, July 21, 1930.

HON. JOHN W. PRUGH, *Superintendent, Division of Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Section 9670 of the General Code of Ohio authorizes the Superintendent of Building and Loan Associations to prescribe the form of bond to be executed by and on behalf of the officers and employes of building and loan associations.

We submit herewith three forms of bond known as Building and Loan Blanket Bond Standard Form No. 16, viz.:

(1) Bond which contains a rider specifically stating that such bond covers ‘faithful performance of duty’ in compliance with the section above referred to.

(2) A form which eliminates Section 16 of the bond, which section provided that the bond ‘is not given to comply with any statutory requirement and shall not be considered as a statutory bond’, thereby by implication at least reading such coverage into the bond.

(3) A form of bond which by rider attached thereto eliminates Section 16 as contained in the body of the bond.

In the opinion of the undersigned either of the forms above referred to can be considered as being a proper form of bond within the limits of Section 9670 of the General Code.

This is particularly true we believe of Form No. 1 above.

This question has been under consideration for a long time, and we have been confronted with a great many conditions due to the doubt raised as to

these surety bonds, and we therefore trust that at an early date we may have your approval of one of the forms herewith submitted, in order that this question may be settled finally in a way which we think will afford ample protection to investors in building and loan associations.

As to another objection raised with respect to surety bonds, we call attention to the fact that each of the forms submitted refers to the building and loan associations to be covered thereunder as 'the insured', so that it seems to us that the restriction heretofore laid down could properly be waived, especially in view of the fact that no other class of financial institutions is deprived of the protection which we believe is more complete in the case of surety bond as compared with a bond signed by individual sureties who, while being at the time of execution of the bond the 'owner in fee simple of unincumbered real estate, the actual value of which is not less than double the amount of such bond', might not be so situated at the time it became necessary to enforce the terms of the bond.

We request your early consideration of this matter believing it to be one of importance to all concerned and trust that you may see the position of this department and will let us have such opinion as will in the best way possible afford ample protection of a kind permitted and required under Section 9670 of the General Code of Ohio."

Section 9670, General Code, provides in part as follows:

" \* \* \* 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; such bond shall guarantee the faithful performance of duty on the part of said officers and employes, 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 the 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. \* \* \* "

It will be observed from the terms of the foregoing statute that the amount and form of the bond required of officers and employes of a building and loan association, as well as the sufficiency of the surety thereon, shall be approved by the board of directors of the building and loan association, the form of the bond to be substantially that prescribed by the Superintendent of Building and Loan Associations.

The board of directors may, if it wishes, permit an officer or employe to give a bond with two or more responsible freeholders as surety thereon, or may require a surety company bond. This right exists under the statute regardless of any form of bond that may be prescribed by the Superintendent of Building and Loan Associations, and the Superintendent of Building and Loan Associations cannot lawfully prescribe a form of bond that will limit the directors of a building and loan company to the approving only of bonds signed by surety companies, or of blanket bonds similar to those submitted, so long as Section 9670, General Code, remains in its present form.

It is hardly fair to say that unless the objections heretofore made to proposed blanket bond forms submitted are waived, building and loan companies will be "de-

prived of the protection which we believe is more complete in the case of surety bond as compared with a bond signed by individual sureties", and that "no other class of financial institutions is deprived of that protection."

Building and loan associations now have the protection afforded by surety bonds by force of the statute and no form of bond that may be prescribed by the Superintendent of Building and Loan Associations can take away that protection. The Superintendent of Building and Loan Associations cannot lawfully prescribe a kind of bond that does not fully protect the directors and patrons of a building and loan association. As stated in my former opinion, which will be referred to hereafter, the Superintendent of Building and Loan Associations has some discretion at least in prescribing a form of bond that may be used by building and loan companies in bonding their officers and employes, but that discretion "extends only to the form of the bond and does not empower him to vary the substance of the bond so as to lessen the security contemplated by the statute."

Questions arising in connection with the proposed use of blanket bonds by building and loan associations in the bonding of officers and employes have on two occasions within the past two years been considered by this office. There was submitted to my immediate predecessor the question of the sufficiency of a proposed "bankers' blanket bond" and a "position schedule bond" for the bonding of officers and employes of a building and loan association. The said proposed "bankers' blanket bond" was very similar to, although not precisely in, the form and terms of "Building and Loan Blanket Bond Standard Form No. 16". He held, as stated in the syllabus to his opinion, published in the Opinions of the Attorney General for 1928 at page 2995:

"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."

The question of whether or not the use of a bond drawn over the form known as "Building and Loan Blanket Bond Standard Form No. 16" by a building and loan company for the bonding of its officers and employes satisfied the law was later submitted to me for my opinion.

The said "Building and Loan Blanket Bond Standard Form No. 16" is in the nature of an omnibus form of bond or contract of indemnity whereby the underwriter, the surety company, executing the bond, agrees to indemnify and save harmless the building and loan association, the assured, from losses occurring by reason of certain defalcations and acts of misfeasance, malfeasance and nonfeasance of certain officers and employes of the building and loan association. It is not to be signed by the individual officers and employes but is meant to cover all of certain classes of officers and employes designated therein, as a blanket, as the name indicates. When first submitted, the form contained Section 16 which read as follows:

"This bond is not given to comply with any statutory requirement and shall not be construed as a statutory bond."

Before the opinion was prepared I was informed by letter from you that the representatives of the various surety companies in New York had agreed to the elimination of Section 16 from said form, and the opinion was prepared with that understanding. In the said opinion, being Opinion No. 532, rendered under date of July 1, 1929, and addressed to you, I held that the proposed "Building and Loan Bond Standard Form No. 16" did not comply with the requirements of Section 9670, General Code, and that the prescribing of that form of bond by the Superintendent of Building and

Loan Associations for the purposes contemplated by Section 9670, General Code, was therefore disapproved.

Without repeating at this time the reasons for the conclusions in the former opinion, I would direct your attention to the opinion itself where the matter is quite fully discussed. In the course of the opinion I said:

“Among other things, the statute requires that the bond shall guarantee the faithful performance of duty on the part of officers and employes of a building and loan association. This, in my opinion, requires a guarantee of something more than is guaranteed under the terms of the contract of indemnity submitted herewith.”

For the reasons stated, if for no other, it is my opinion that the security afforded to a building and loan association by a contract of indemnity such as was under consideration in my former opinion does not give to the building and loan association the security which the statute requires. The proposed contract of indemnity as contained in Standard Form No. 16 secures the directors and patrons of a building and loan association, among other things, against any dishonest act committed by any of the employes, but does not insure against the carelessness or negligence of those employes which the statute requires must be done by stating that the bond of the officer or employe shall guarantee the faithful performance of duty. This subject is fully discussed in the former opinion.

No objection was made to the bond on account of its being a blanket bond or what is sometimes called an omnibus form of bond rather than individual bonds given by each officer and employe and signed by the officer or employe and an individual surety or surety company. It is my opinion, that if an omnibus or blanket bond similar to Standard Form No. 16 were to be so drawn as to secure the directors and patrons of a building and loan association as fully as the statute contemplates they shall be secured, it would be lawful for the Superintendent of Building and Loan Associations to prescribe such a bond and for the directors of a building and loan association to secure and approve such a bond in lieu of individual bonds executed by each officer and employe. In the course of my former opinion, I said:

“The manifest purpose of requiring officers and employes of building and loan associations to give a bond, as does Section 9670, General Code, is to afford protection to the building and loan association and its directors, depositors, and patrons against possible losses that might accrue on account of failure on the part of those officers and employes faithfully to perform their duties or failure safely to keep and properly apply the moneys and property coming into their hands, and if an ‘omnibus’ indemnity bond covering these officers and employes contained the proper provisions that purpose would be effected. It would necessarily have to contain provisions guaranteeing ‘the faithful performance of duty on the part of said officers and employes and the safekeeping and proper application of all moneys and property coming into their hands,’ as is provided by the statute, either in the words of the statute or by such language as to mean the same thing, else it would not afford the protection contemplated by the statute.

By the terms of Section 9670, General Code, the Superintendent of Building and Loan Associations is authorized to prescribe the form of bond which shall be given by the officers and employes of a building and loan association. If such superintendent, in his discretion, prescribes a form of omnibus indemnity bond covering all or a number of the officers and employes

of a building and loan association and such indemnity bond fully protects the building and loan association, its directors, depositors and patrons to the same extent as would individual bonds executed by each officer and employe of the building and loan association in strict compliance with Section 9670 of the General Code, I am of the opinion that such an omnibus indemnity bond would meet the requirements of the law."

You now submit three forms of bond each purporting on its face to be Building and Loan Blanket Bond Standard Form No. 16. Two of the forms submitted have riders attached. Upon comparison, I find that although these forms purport on their face to be Standard Form No. 16 for Building and Loan Associations, they are not identically the same as the Standard Form No. 16 which was under consideration in my former opinion, the said standard form having been revised since your former inquiry was submitted.

The three forms now submitted are numbered 1, 2 and 3. No. 2 is a form of the Fidelity and Casualty Company of New York and is Standard Form No. 16 as revised without any rider attached. The said Form No. 2, being the present or revised Standard Form No. 16, is the same as former Standard Form No. 16 with the exception that there is added to Section 7 of the Bond, which section contains a recital of a number of things which the bond does not cover, an additional sub-section which reads as follows:

"(f) Any loss of property contained in customers' safe deposit boxes, unless such loss be sustained through any dishonest act of an identifiable employe in such circumstances as shall make the Insured legally liable therefor."

There is also eliminated in the revised form sub-section (c) of Section 14 relating to the terminability of the bond, and Section 16 of former Standard Form No. 16, which recited that the bond was not given to comply with any statutory requirement and should not be construed as a statutory bond.

Form No. 3 submitted is the same as former Standard Form No. 16 with a rider attached so as to make it conform to the revised Standard Form No. 16, thus making Forms Nos. 2 and 3, as submitted, exactly the same. As neither of these forms meet the objections set out in my former opinion, they are therefore disapproved.

Form No. 1 submitted purports to overcome at least some of the objections which were made in my former opinion to Standard Form No. 16, in so far as said Standard Form No. 16 might be substituted for the bond required by the statute. Section 9670, General Code. Said Form No. 1 as submitted contains a rider to be attached to and form a part of Building and Loan Blanket Bond Standard Form No. 16. The said rider provides that Indemnity Clause A of the standard form of bond be stricken from the bond and there be substituted therefor the following:

"A. Through the failure of any of the employees, as defined in Section 6 hereof, to perform faithfully their duties and to keep safely and apply properly all moneys or property coming into their hands."

The Indemnity Clause A which by this rider is eliminated, proposed to insure the building and loan association against dishonest acts of its employes, whereas the substituted clause insures the association against a failure on the part of the officers and employes to faithfully perform their duties and to keep safe and apply properly all moneys or property coming into their hands. The insurance afforded by the

substituted Clause A meets the requirements of the statute and overcomes the objections in that respect set forth in the former opinion.

The proposed rider to Form No. 1, being a form submitted by the Fidelity and Deposit Company of Maryland, contains other provisions which do not impress me as being pertinent to the present inquiry. It will be observed upon an examination of the proposed blanket bond that it purports to secure the building and loan associations against a number of other risks than those contemplated by the provisions of Section 9670, General Code. For instance, it insures the building and loan association against robbery, burglary, larceny, theft or destruction of property under certain circumstances. The law does not require a building and loan association to secure itself against such risks, although it is no doubt perfectly proper and in line with good business practice to effect such insurance. Such a contract, however, cannot in any sense of the word be called a statutory bond, although as has been said before, if properly drawn, it may be taken in lieu of the statutory bond required by Section 9670, General Code, and if so drawn as to afford the security contemplated by the statute, the giving or taking of a bond such as is described in Section 9670, General Code, would not be necessary. It, however, cannot be considered as anything more than a private contract of insurance between the building and loan association and the underwriter, and for that reason the terms of the contract with respect to the limitation of actions thereunder will govern rather than any statutory requirements with reference thereto.

I am of the opinion that Form No. 1 submitted with the proposed rider attached would afford to a building and loan association, when properly executed, the same security which would be afforded to directors and patrons of a building and loan association as would individual bonds drawn strictly in accordance with the terms of Section 9670, General Code, in all respects except one.

Section 11226, General Code, reads as follows:

“An action on the official bond, or undertaking of an officer, assignee, trustee, executor, administrator, or guardian, or on a bond or undertaking given in pursuance of statute, shall be brought within ten years after the cause thereof accrued.”

If individual bonds of the officers and employes of a building and loan association were required by the directors strictly in accordance with Section 9670, General Code, those bonds would, without a doubt, be “bonds or undertakings given in pursuance of statute” and actions might be brought thereon within ten years after the cause of action accrued.

The limitation of actions for the recovery of losses under the indemnity contract submitted is fixed by the contract, and such limitation is less liberal than that of Section 11226, General Code. The contract with reference thereto reads as follows:

“Legal proceedings for recovery of loss hereunder shall not be brought prior to the expiration of three months from the furnishing of such proof, nor after the expiration of twelve months from the discovery of such loss. If any limitation embodied in this paragraph is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.”

The above provision of the contract does not, in my opinion, afford to persons who suffer loss on account of a failure of the officers or employes of a building and

loan association to faithfully perform their duties, the protection which the law contemplates with respect to the time of bringing actions for the recovery of such loss if bonds had been given by the officers and employes strictly in accordance with the statute.

Even though an omnibus or blanket form of indemnity contract be so drawn in all respects, except that as to limitation of actions thereunder, as to afford to the directors and members of a building and loan association protection equal to that contemplated by Section 9670, General Code, and thus justify the Superintendent of Building and Loan Associations in prescribing that form of bond in lieu of the statutory bonds provided for by said Section 9670, General Code, were it not for the provision of the bond specifying a shorter term of limitation of action thereunder, a provision in the contract specifying a shorter term of limitation of action thereunder than ten years, clearly, in my opinion, renders the security afforded thereby less than that contemplated by law and precludes the Superintendent of Building and Loan Associations from lawfully prescribing such a form of contract in lieu of the bonds provided for by Section 9670, General Code, and places upon a board of directors of a building and loan association accepting such a contract of indemnity in lieu of individual bonds of its officers and employes, the risk of being personally responsible for losses to members which might occur by reason of the failure on their part to require the kind of bond provided for by the statute.

The last sentence of the quotation from the contract above wherein it is provided that if any limitation embodied in the bond is prohibited by any law, such limitation should be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law, does not, in my opinion, suffice to cure the discrepancy between the terms of the contract and what the law requires. This subject was discussed in my former opinion, to which your attention is directed.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2120.

APPROVAL, LEASE BETWEEN GEORGE SPRINGER AND LOUISE CRAWFORD AND STATE OF OHIO TO LAND IN CLEARCREEK TOWNSHIP, WARREN COUNTY, OHIO, FOR STATE GAME REFUGE PURPOSES.

COLUMBUS, OHIO, July 21, 1930.

HON. J. W. THOMPSON, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted Lease No. 2062 in which George Springer and Louise Crawford grant 23 acres of land situated in Clearcreek Township, in Warren County, to the State for State Game Refuge purposes.

Finding said lease to have been executed in proper legal form, I have accordingly approved the same and return it herewith.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*