

Opinion No. 58-101

May 20, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Jr., Assistant Attorney General

TO: Mr. Ralph Apodaca, Superintendent of Insurance, State Corporation Commission, Santa Fe, New Mexico

QUESTION

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May a sheriff or other officer authorized to take bail bonds set a limit upon the dollar volume of the bail bonds which may be in force at any time of a foreign surety corporation which is duly authorized to transact business in this State and has complied with the minimum requirements of the State's insurance laws?

CONCLUSION

No.

OPINION

ANALYSIS

The material sections of our statutes governing the execution and approval of bail bonds are the following:

"41-4-4. Sureties on bail bond -- Justification -- approval. The sureties upon any bail bond, shall in all cases justify as to their sufficiency; **and the officer taking such bond shall certify his approval of the same, as to its form and the manner of its execution and as to the sufficiency of the sureties thereon.** (Emphasis ours).

41-4-9. Officers authorized to take recognizances and approve bail. -- Any officer authorized to execute a warrant in a criminal action may take a recognizance and approve the bail; he may administer the oath and examine the bail as to its sufficiency.

41-4-12. Sheriff authorized to take recognizance after commitment. -- When any person is committed for want of bail, and the amount of the bail is specified in the warrant of commitment, the sheriff may take the recognizance and approve the bail.

41-4-14. Affidavit or examination of surety -- Oath -- A court or officer required to take or accept any bail or recognizance, or to approve the sureties offered on any bond or recognizance in any case of a criminal nature, may require any person as surety

thereon to make affidavit as to his qualifications, or to be examined orally under oath touching the same, and such court or officer may take such or administer such oath.

41-4-15. Surety on recognizance bonds -- Qualifications. -- One (1) surety on each such recognizance must be a resident freeholder of the county in which the prosecution is pending, and the surety or sureties must be worth at least double the sum to be secured, and must have property in this state liable to execution equal to the sum to be secured, and when two (2) or more sureties are offered to the same recognizance they must have in the aggregate the qualifications prescribed in this section: **Provided, that whenever, by the laws of this state a surety company is authorized to become surety on recognizance bonds, such surety company may be accepted as sufficient surety on any such bond.**" (Emphasis ours).

It becomes apparent from a reading of the statutes quoted above that a sheriff is authorized to take a bail bond, and that his approval as to its form, manner of execution and sufficiency of the sureties thereon is necessary. In determining the sufficiency of a surety on any bail bond, however, a sheriff or other officer authorized to take a recognizance must most certainly be governed by Sec. 41-4-15, supra, which sets out the qualifications of sureties on recognizance bonds.

The statute in question clearly distinguishes between individual sureties and corporate sureties licensed by the Department of Insurance of the State Corporation Commission. The latter are by the terms of the statute acceptable as sufficient sureties on any recognizance bond. The basis for the exception of corporate sureties licensed to do business in this state from the qualifications set out in Sec. 41-4-15, supra, becomes apparent in view of the fact that corporate sureties are thoroughly regulated by the Department of Insurance under Chapters 28 and 58 of the New Mexico Statutes Annotated, 1953 Comp.

This office must, therefore, conclude that although a sheriff or other officer authorized to take a bail bond may approve or disapprove such a bond as to its form or manner of execution, he is without authority to limit the dollar volume of bail bonds which may be in force at anytime of a foreign surety corporation which is duly authorized to transact business in this state and has complied with the minimum requirements of our insurance laws.