

Opinion No. 18-2140

December 6, 1918

BY: C. A. HATCH, Assistant Attorney General

TO: Mr. Carl A. Bishop, Santa Fe, New Mexico.

County Treasurers May Give More Than One Official Bond.

OPINION

My I am writing you with reference to the giving of bonds by county treasurers. I am advised that many of the treasurers desire to make their bonds in two or more companies. I am asked whether they can lawfully do this, and if the section of the statute requiring the bond only contemplates one bond would their giving more than one invalidate the bonds given.

In this connection I wish to advise that I have looked into this matter quite carefully. I find the courts generally hold that the requirements with reference to the forms of official bonds are directory and not mandatory. It seems to be the unanimous holding that if the bond given substantially complies with the statute, it is a good and subsisting obligation in the event of a default, that is: in these cases the courts look to the substance rather than the form.

With this rule of law in mind, let us look to our statute and see just what the requirements are, and whether the giving of more than one bond would substantially comply with the statute. Section 17, Chapter 57 of the Laws of 1915, requires the bond given by a county treasurer to be in a sum equal to 35% of the public moneys received by the treasurer during the preceding fiscal year. This is the requirement of the statute with which we are now concerned, in enacting which the law-makers must have had in mind, and must have intended, that the people be protected against a default of the treasurer to the extent of 35% of the monies received by the treasurer during the preceding fiscal year. The essential part of the requirement is that the people be protected to this extent. Now, if a treasurer should give one bond for 20% of the monies collected in the previous year, and another for 15%, making the total of the two bonds 35 per cent, would not the people receive the protection contemplated or required by this statute. Common sense answers this in the affirmative. It is my opinion that when a treasurer gives two or more bonds, the aggregate sum of which equals the sum specified by the statute, he has carried out the spirit of the law. This being true, I do not think the bonds given by a treasurer would be invalidated simply because there were two contracts instead of one. Each in my opinion would constitute and be the official bond and the sureties thereon would be liable to the extent of their specified obligations. I conclude that even though there is no special authorization in the statute giving the treasurer the right to execute more than one bond, it is my opinion that when he does

execute more than one the obligations are good, and the county will be fully and amply protected.

I have written this letter in order to correct any misunderstanding which may have been occasioned by my former advice to you.