

Opinion No. 21-3003

June 4, 1921

BY: A. M. EDWARDS, Assistant Attorney General

TO: Miss J. M. Avery, Attorney in Fact, The National Surety Company, Santa Fe, New Mexico.

Regarding Bonds Required From Abstractors.

OPINION

{*65} This office has your letter of May 30th asking for an opinion upon Chapter 73 of the Laws of 1921, which requires abstractors to file a three thousand dollar surety bond with the State Corporation Commission.

You first ask what is the law in regard to the termination of liability under the bond so far as the statute of limitations is concerned. Section 3348 of the 1915 Codification provides that an action upon any bond must be brought within six years. This section would apply to a suit upon the abstractor's bond. The courts have generally held that the statute would begin to run from the date of the abstract upon which the suit was based.

If an action were brought against the abstractor by reason of a defect in the abstract, the action would probably be founded upon an unwritten contract, and Section 3349 of the 1915 Codification would apply, which provides that such actions must be brought within four years.

You also ask us to interpret the meaning of the following words in the act:

"which said bond shall be continued in full force and effect during the entire time such person, co-partnership or corporation shall engage in the abstract business."

From the wording of the foregoing, it would seem that it was the intention of the legislature to make the liability under the bond a continued obligation from the date of bond for the full time during which the person, co-partnership or corporation for which the bond was given, was engaged in the abstract business. If this interpretation is correct, the bondsmen could not cancel its bond or be in any way relieved from its liability as such until the abstractor had gone out of office.