

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 81-1010
	:	
of	:	<u>MARCH 19, 1982</u>
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THE HONORABLE NEIL B. VAN WINKLE, COUNTY COUNSEL,
MONO COUNTY, has requested an opinion on the following questions:

1. Is a master bond acquired by a county to cover its officers pursuant to Government Code section 24154 subject to the requirement of approval by judges of the superior court under Government Code sections 1457 and 1458?

2. Is a program of self-insurance adopted by a county in lieu of bonds to cover its officers pursuant to Government Code section 24156 subject to the requirement of approval by judges of the superior court under Government Code sections 1457 and 1458?

CONCLUSION

1. A master bond acquired by a county to cover its officers pursuant to Government Code section 24154 is subject to the requirement of approval by judges of the superior court under Government Code sections 1457 and 1458.

2. A program of self-insurance adopted by a county in lieu of bonds to cover its officers pursuant to Government Code section 24156 is not subject to the requirement of approval by judges of the superior court under Government Code sections 1457 and 1458.

ANALYSIS

As a qualification for public office, many county officers are required to provide an official bond (Gov. Code, 24150-24155;¹ 61 Ops.Cal.Atty.Gen. 394 (1978); see 11 Ops.Cal.Atty.Gen. 159, 162 (1948)) which secures the faithful performance by such officers of their official duties (§§ 1501, 1504).² Every official bond must be filed in the specified county office. (§ 1450, 1457, 1459.) Such bond must be filed before the officer assumes his office. (See § 1450 requiring the bond to be filed "within the time prescribed for filing the oath," and Cal. Const., art. XX, § 3 requiring public officers to take the oath prior to assuming the duties of their offices.)³ However, such bonds may not be filed until they are approved by the appropriate officer. (§ 1452; see also § 1458.) And until such bond is approved and filed, it is not operative. (*People v. Van Ness* (1889) 79 Cal. 84, 88; *People v. Kneeland* (1866) 31 Cal. 288, 291; see *Mangrum v. Truesdale* (1900) 128 Cal. 145, 146-147.)

¹ Hereafter all section references are to the Government Code unless otherwise specified.

² We note that sections 24150 to 24155 concerning the bonds of county officers do not literally declare that the listed officers are required to have bonds. However, section 24150 provides ". . . the board of supervisors *shall* prescribe the amounts of the official bonds of the treasurer, county clerk, auditor, sheriff, tax collector, district attorney, recorder, assessor, surveyor, superintendent of schools, public administrator, coroner, and constable." (Emphasis added.) Since it would be unreasonable to assume that the Legislature would have mandated the board of supervisors to prescribe the amounts of the bonds of the listed officers if such officers were not required to provide bonds, and since "any construction should be avoided which implies that the legislature . . . used words in vain, the legal intendment being that each and every clause was inserted for some useful and sensible purpose" (*Prager v. Isreal* (1940) 15 Cal.2d 89, 93), the implication that section 24150 requires such officers to provide bonds is virtually compelled. "[W]hatever is necessarily implied in the statute is as much a part of it as that which is expressed." (*Sondeno v. Union Commerce Bank* (1977) 71 Cal.App.3d 391, 395.)

³ See also section 1303 which renders it a misdemeanor to "exercise any function of a public office . . . without giving the required bond"

The judge or judges of the superior court have been designated as the officers to approve the bonds of county officers. In this regard section 1457 provides:

"Unless otherwise provided, the official bonds of officers of a county and judicial district shall be approved by the judge of the superior court, recorded in the office of the county recorder, and then filed in the county clerk's office."

Section 1458 provides:

"The bonds of supervisors, treasurers, county clerks, auditors, sheriffs, tax collectors, district attorneys, recorders, assessors, surveyors, superintendents of schools, public administrators, coroners, and constables shall be approved by the judge or a majority of judges, if there be more than one, of the superior court before the bonds can be recorded and filed. In counties having five or more judges, the approval of three judges is sufficient."

In addition to individual bonds, the law provides for blanket or "master" bonds. (§§ 1481, 24154.) Such master bonds were initially not available for coverage of the elected or major county officers. (11 Ops.Cal.Atty.Gen. 159, *supra*, at p. 162; 61 Ops.Cal.Atty.Gen. 394, *supra*, at p. 395.) However, section 24154, enacted in 1967, authorized the use of such master bonds as a supplement to the individual bonds of those county officers specified in sections 24150 to 24155, and by virtue of an amendment to that section in 1974, a county was afforded the option of including those officers under a master bond *in place of* individual bonds. (61 Ops.Cal.Atty.Gen. 394, *supra*, at p. 395.) Section 24154 now provides:

"*As an alternative or supplementary to the bonds required by this chapter, the board of supervisors may include the county officers listed in this chapter as covered employees in any master bond used in their county in accordance with Section 1481 of this code.*"⁴ (Emphasis added.)

⁴ To the extent pertinent, section 1481 provides:

"When deemed expedient by the appointing power, a master official bond, or other form of master bond may be used which shall provide coverage on more than one officer, employee or agent who is required by the appointing power or the board of supervisors of a chartered or general law county to give bond. . . . A master bond under this section shall be in the form and for the term which is approved by the appointing power or the board of supervisors of a chartered or general law county and shall inure to the benefit of the appointing power, state, county, special

The first question we consider is whether such a master bond is subject to the same requirement of approval by superior court judges as are the individual bonds of county officers.⁵

Directly relevant to this question are sections 1450 and 1452. Section 1450 provides:

"Unless otherwise provided, every official bond shall be filed in the proper office within the time prescribed for filing the oath."

Section 1452 provides:

"No officer with whom any official bond is required to be filed shall file such bond until approved." (See also § 1458 requiring the approval of superior court judges before the bonds of specified county officers can be recorded and filed; and see § 1451 requiring that "[t]he approval of every official bond shall be endorsed thereon and signed by the officer approving the bond."

Thus, in the absence of a provision to the contrary, every official bond has to be filed, and since such bonds may not be filed until they are approved, it follows that every official bond must be approved.

As noted, section 1481 provides for a "master official bond" which by virtue of section 24154 may be utilized to cover county officers whose individual bonds would be subject to approval by judges of the superior court. Being an official bond, such a master bond is encompassed by the plain language of sections 1450 and 1452 requiring "*every official bond*" (emphasis added) to be filed and approved, and by sections 1457 and 1458 requiring such bonds of county officers to be approved by superior court judges. "A

purpose assessing or taxing district, or municipality by whom such officer, employee, or agent is employed as well as the officer under whom the employee or agent serves. . . ."

⁵ We note that section 1481 authorizes the use of "a master *official* bond, or *other form* of master bond" (emphasis added) and that section 1457, requiring judicial approval of the bonds of county officers, refers only to "official" bonds. Under the criteria specified by the cases and statutes, an "official" bond is one that is legally required of a public official which is conditioned upon the faithful performance or discharge of his official duties. (*Hubert v. Mendheim* (1883) 64 Cal. 213, 218; *Union Bank & Trust Co. v. Los Angeles* (1938) 11 Cal.2d 675, 678; § 1501; 61 Ops.Cal.Atty.Gen. 394, *supra*, at p. 395.) For purposes of this opinion we are assuming that it is such an "official" bond, ensuring faithful performance, that is at issue and not an "other form" of bond.

fundamental rule of statutory interpretation requires that statutes be construed according to their plain meaning, absent persuasive evidence of a contrary legislative intent." (*Lister v. Superior Court* (1979) 98 Cal.App.3d 64, 69.) We are unable to discern anything in the pertinent statutes which would justify excluding the official bonds of county officers from the operation of the basic requirement of judicial approval merely because such official bonds are in master rather than individual form.

The purpose of judicial approval is made apparent by the various provisions setting forth the specifications for official bonds. For example, section 1504(a) requires the bond to cover not only breaches by the officer executing the bond but also those of his deputies and clerks. Sections 1501 and 1504(b) require that official bonds be conditioned upon the faithful performance of duties required both by the law existing at the time of the bond's execution as well as by subsequently enacted law. Section 1503 requires official bonds to be in joint and several form.

Thus the requirement of judicial approval seeks to assure that the protection afforded by official bonds will conform to the standards specified by law. The fact that the official bond in question is a master bond rather than an individual bond would in no way appear to diminish the necessity for such judicial oversight. Further section 1531 expressly requires judicial approval of the surety on the bonds of those county officers listed in section 1458. Section 1531 provides:

"The sureties on the bonds of all officers of a county or judicial district named in Section 1458 shall first be approved by the judge or judges of the superior court as is provided for the approval of the bond of their principals, before their principals' bonds may be recorded and filed. All persons offered as sureties may be examined on oath touching their qualifications.

"No person can be admitted as surety on any such bond unless he is:

"(a) A resident and freeholder, or householder, within the State.

"(b) Worth in real or personal property, or both, situate in the State, the amount of his undertaking, over and above all sums for which he is already liable, exclusive of property exempt from execution and forced sale."

Similar provisions with respect to the bonds of those county officers who are not specified in section 1458 are set forth in section 1530 which provides:

"The officer whose duty it is to approve official bonds required of state officers and of officers of a county or judicial district not named in

Section 1458 shall not accept or approve any such bond unless each of the sureties severally justify before an officer authorized to administer oaths, as follows:

"(a) On a bond given by a state officer, that such surety is a resident and freeholder, or householder, within the State.

"(b) On a bond given by an officer of a county or judicial district not named in Section 1458, that such surety is a resident and freeholder, or householder, within such county or within an adjoining county.

"(c) That such surety is worth the amount for which he becomes surety, over and above all his debts and liabilities, in unencumbered property situated within the State, exclusive of property exempt from execution and forced sale."

Thus, in view of the fact that a bond involves security for the county to be furnished by third parties (11 Ops.Cal.Atty.Gen. 159, *supra*, at p. 161), the evident purpose of the requirement of judicial approval of sureties is to ensure that the parties supplying the security are accessible and have the financial resources to meet their surety commitments. Just as in the case of determining whether the bond conforms to the legal specifications set forth in the statutes, the approval requirement's purpose of ensuring the quality of such third party security would appear as pertinent in the case of a master bond covering county officers as it would in the case of an individual bond covering such officers. A conclusion that judicial approval is required by the statute for either type of bond is thus consistent with the purpose of ensuring both the quality of the surety and the legal sufficiency of the protection afforded by the bond. "[A] strong indicator of legislative intent is the purpose of the statute." (*Gipe v. Superior Court* (1981) 124 Cal.App.3d 617, 626.)

Finally, it has been suggested that a different conclusion might be required by the phrase "unless otherwise provided" contained in section 1457 and by the phrase "as an alternative" contained in section 24154. Concerning the phrase "unless otherwise provided" in section 1457 (the section requiring a superior court judge to approve the official bonds of county officers), the only provision, where it is "otherwise provided" with respect to a judge's approval, is set forth in section 1458 which, rather than dispensing with such approval, requires approval of the bonds of the designated county officers by a majority of superior court judges in some cases or by at least three such judges in other cases.

As to the phrase "as an alternative" in section 24154 (the section allowing a master bond to be used for designated county officers), that phrase explicitly has reference to alternatives in the form of the bond and does not in any manner refer to any alternatives concerning the judicial approval requirement.

There is thus no basis for presuming that, when the statute was amended to permit the designated county officers to be covered by a master official bond, the rule requiring judicial approval of the bonds of county officers, which has been in effect since the establishment of this state (Stats. 1850, ch. 21, § 1, p. 74), would not be applicable to master bonds covering such officers. As declared by the Supreme Court in *Busching v. Superior Court* (1974) 12 Cal.3d 44, "it should not 'be presumed that the Legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication.' . . ." (*Accord, Theodor v. Superior Court* (1972) 8 Cal.3d 77, 92; *Williams v. Los Angeles Metropolitan Transit Authority* (1968) 68 Cal.2d 599, 603-604.)

We therefore conclude that judicial approval pursuant to sections 1457 and 1458 is required for an official master bond covering county officers.

We now consider the question of whether the county's utilization of a program of self-insurance, in lieu of bonds, for its officers or employees is subject to judicial approval under sections 1457 or 1458. This question arises out of section 24156, enacted in 1976, which provides in pertinent part:

"The board of supervisors of any county may, by resolution, adopt a program of self-insurance in lieu of bonds for any officer or employee employed by such county After the resolution is adopted, *any or all requirements of law with respect to faithful performance or revolving fund bonds shall be inapplicable to such county . . . or any officer or employee thereof*; provided, however, that such a county shall provide for self-insurance, the amount of which shall be determined pursuant to the provisions of Sections 1480, 1481, 24150 and 24151." (Emphasis added.)

As to whether the program of self-insurance specified in section 24156 is subject to judicial approval, we note initially that the requirement of judicial approval has express reference only to the approval of "bonds." (§§ 1457, 1458.) There is no reference in that requirement to the approval of any programs of self-insurance. There is a critical distinction between bonds and self-insurance as a security mechanism. This distinction lies in the fact that self-insurance does not rely upon the resources of third parties for security as do bonds. The self-insurer marshals its own resources for such security. (See § 990.4(a) affording a county general authority to ensure against liability by self-insurance

which may be funded by appropriations placed in reserve for that purpose.) Consequently one of the functions of the approval requirement, that of confirming the sufficiency of the surety, is not relevant to the self-insurance situation. It is therefore consonant with this distinction between bonds and self-insurance that section 24156 specifically provides that, upon a county's adopting self-insurance, all of the legal requirements concerning bonds "shall be inapplicable to such county"

Thus, consistent with an important purpose of the requirement of judicial approval, the plain meaning of the statutes explicitly excludes self-insurance from such requirement.

We therefore conclude that a program of self-insurance instituted by a county pursuant to section 24156 is not subject to the requirements of judicial approval under sections 1457 and 1458.
