

PENAL BONDS: Personal property, as well as real estate, may be used to qualify a surety on a bail bond.

March 30, 1951

3-30-51

Mr. Jerry B. Schnapp  
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Dear Mr. Schnapp:

We have given careful consideration to your recent request for an official opinion, which request is as follows:

"The Honorable Circuit Judge, J. O. Swink, and myself were under the impression that before a bondsman could qualify for a Penal Bond he had to qualify on the basis of Real Estate only and that personal property could not be used for his qualifications. However, in reading the new 1949 Statutes, we cannot find in those Statutes where this is the case. Therefore, will you kindly advise as to whether or not personal property may be used for the qualification of a bondsman."

The qualifications of a surety on a penal bond are defined in Section 544.580, RSMo 1949, which is as follows:

"Sureties in recognizances in criminal cases and proceedings shall be residents of this state, and shall be worth, over and above the amount exempt from execution, and the amount of their debts and liabilities, the sum in which bail is required; and the person or persons offered as sureties may be examined on oath in regard to their qualifications as sureties, and other proof may be taken in regard to the sufficiency of the same. The officer authorized to take any such recognizance is authorized to administer all necessary oaths in that behalf."

Mr. Jerry B. Schnapp

This statute has been in force over a long period of years. It was Section 1833, R. S. Mo. 1879. Its wording at that time was exactly the same as it is now. No other law can be found to modify or change the clear meaning of this statute. It simply states that a surety must be worth, over and above exemptions and debts, the sum required in the bond. It makes no mention of any type of property, and certainly the term "worth" includes personal property as well as real estate.

Under the Laws of Missouri a corporation may be accepted as surety on a penal bond. This authority is contained in Section 379.020, RSMo 1949. The first paragraph of this statute is as follows:

"1. Any company having a paid-up capital of not less than two hundred thousand dollars, organized and incorporated under the laws of this or any other state of the United States, or any foreign government, for the purpose of transacting the business of becoming surety on bonds or obligations of persons or corporations, or of insuring the fidelity of persons holding places of public or private trust, and which has complied with all the requirements of the law regulating the admission of such companies to transact business in this state, may, on production of evidence of solvency satisfactory to the court, judge, clerk, head of department or other officer, person or persons authorized to approve the same, become and be accepted as surety on the bond, recognizance or other writing obligatory of any person or corporation in or concerning any matter in which the giving of a bond or other obligation is authorized, required or permitted by the laws of this state; and if such surety company shall furnish satisfactory evidence of its ability to provide all the security required by law, no additional security may be exacted, but other security may, in the discretion of the official authorized to approve such bond or obligation, be required; and such surety company may be released from

Mr. Jerry B. Schnapp

its liability on the same terms and conditions as are by law prescribed for the release of individuals, it being the true intent and meaning of sections 379.010 to 379.160 to enable corporations, created for that purpose, to become surety on any bond recognizance, or other writing in the nature of a bond, in the same manner that natural persons may, subject to all the rights and liabilities of such persons."

Such corporation must, of course, meet certain requirements in regard to capital stock. But no mention is made of real estate. A bonding company may be accepted on a penal bond without owning real estate. The law, therefore, permits a surety to qualify on the basis of personal assets.

CONCLUSION

It is the opinion of this office that personal property, as well as real estate, may be used to qualify a surety on a bail bond.

Respectfully submitted,

B. A. TAYLOR  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
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