

N.D.A.G. Letter to Burke (Nov. 3, 1988)

November 3, 1988

Ms. Patricia L. Burke
Burleigh County State's Attorney
514 East Thayer Avenue
Bismarck, ND 58501

Dear Ms. Burke:

Thank you for your letter of October 7, 1988, inquiring whether a county court may require additional bond coverage for public administrators of a nature other than the security required by N.D.C.C. 11-21-02. You further asked who would be responsible for paying the increased bond amount if required by the court.

N.D.C.C. 11-21-03 states, in part, as follows:

The court, from time to time and as occasion may require, may demand additional security from such administrator, and if the same is not furnished within twenty days after such demand, may remove the public administrator and appoint another.

Clearly, it is up to the court's discretion to ascertain whether additional security is required for an administrator. The court may conclude that an adjustment in the amount or nature of the administrator's bond is necessary.

Your second question concerns who is the party responsible for paying the increased bond amount required by the court where the character of the additional security differs from the original bond provided by the public administrator. In Burleigh County, I understand the bond of the public administrator, required by N.D.C.C. 11-10-06, 11-21-02, is paid for by the county. The bond requirements are conditioned upon the administrator's faithful discharge of the respective duties of the office. However, the increased security required by the court pursuant to N.D.C.C. 11-21-03, in the case which prompted your inquiry, concerns a type of bond other than that provided for pursuant to N.D.C.C. 11-10-06.

Where the increased bonding requirements are of a similar nature to those bonding requirements provided for by N.D.C.C. 11-10-06, it is reasonable to conclude that the county should bear the responsibility for the increased bonding requirements because it provided the initial bond. However, where the increased bonding requirements are of a nature other than that required by N.D.C.C. 11-10-06, a question remains as to the responsibility for paying the increased bonding requirements. The statutes are silent on the issue and do not offer any guidance or assistance.

In State ex rel. Linde v. Taylor, 156 N.W. 561 (N.D. 1916), the court noted that the North Dakota Constitution "neither requires municipal officers to furnish official bonds, nor does it exempt them from so doing. In absence of such constitutional provisions, it is generally held that the legislature has the right to require such officers to furnish bonds." Id. at 571. The court also noted a 1903 statute providing that the premium for bonds furnished by local public officials was to be paid out of the general fund of that political subdivision. That 1903 statute was omitted from the 1943 Revised Code in light of the creation of the State Bonding Fund.

In 1929, the Georgia Supreme Court addressed this issue. That court concluded that a political subdivision has no inherent duty to pay or otherwise furnish bonds for its officers.

In this part of the statute there are no express words that make it obligatory upon the county to pay the premiums upon the bonds which the tax commissioner is to furnish, nor is there any provision in any other part of the act of 1927 which makes it the duty of the county to pay this premium; nor, after a careful consideration of the terms of that part of the statute which we have quoted, can we see that it affords a basis for the conclusion that it is necessarily to be implied that the county shall pay it. We think the implication is the reverse of such a conclusion.

Daniel v. Hutchinson, 150 S.E. 681, 682 (Ga. 1929). See also 63A Am. Jur.2d Public Officers and Employees 504 (1984).

In the absence of legislation requiring a political subdivision to furnish or pay for bonds obtained by public officers where required by law, I conclude there is no affirmative duty upon a political subdivision to take such action. Thus, where a public administrator is required to provide increased security, the county has no duty to incur the costs of providing that increased security. Where the county does not so act, the public administrator must act individually to comply with the court's requirement.

Clearly, this matter is ambiguous because of the lack of legislative direction. For that reason, I would strongly urge the parties involved to consider submitting the issue to the Legislature for clarification.

Sincerely,

Nicholas J. Spaeth

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