

**OPINION**  
**58-167**

October 10, 1958            (OPINION)

MINING AND GAS AND OIL PRODUCTION

RE: Control of Gas and Oil Resources - Jurisdiction of Commission -  
Bonds

This is in reply to your letter of October 7, 1958, requesting an opinion of this office in regard to the drilling bond required by the North Dakota State Industrial Commission.

Your questions are stated as:

1. In the case of our drilling bond Form-3-a which is a \$10,000.00 bond, is the liability of the Surety Company limited to \$10,000.00 or is their liability limited to getting the job done that is necessary to be done even if the amount involved is more than \$10,000.00?
  
2. Is this a performance bond? In other words, does this bond cover things other than just simply the matter of plugging a dry and abandoned hole or holes in which production has ceased? I would like to call to your attention the wording of the bond. 'Now, therefore, said principal in its operations after the execution of permit by the State Geologist of the State of North Dakota shall fully comply with the said Chapter 38-08 N.D.R.C. and amendments thereto and the rules and regulations of the Industrial Commission of the State of North Dakota prescribed to govern the production of oil and gas on State and private lands within the State of North Dakota, then in that event the above obligation shall be void, otherwise to remain in full force and effect. What we would like to know is this, does the bond that we are operating under here, cover the repair of wells and other necessary obligations which have not been tended to by the operator and can we force the surety to do this type of work under the terms of this bond?"

You further inform us that this matter has come up in connection with a particular operator who has not done any of the necessary things in the matter of abandonment of one well, and who has several other wells which are in poor shape and should be repaired in order to prevent the waste of oil and gas. Particular violations of rules are in relation to putting undersized fittings on the well in violation of not only your general rules and regulations, but your field rules as well.

We have examined form 3-A, "North Dakota State Industrial Commission Oil and Gas Division Drilling Bond", Section 38-0804, subsection 1, subdivision d, of the North Dakota Revised Code of 1943 and Rule 101 of the General Rules and Regulations for the Conservation of Crude Oil and Natural Gas of The Industrial Commission of North Dakota,

adopted December 1, 1953, revised November 1956.

From such examination, it is our opinion that the form of bond actually used and required by the rules of the Commission as a prerequisite to issuance of a drilling permit under the above cited rule 101 is and is intended to be a penal bond rather than a bond for the indemnification of injured parties.

If we may quote from the annotation at 103 A.L.R. 405: "it has generally been held that where a bond is given to a public body, as a condition of license or other privilege, or conditioned upon compliance with law, the full penalty of such bond may be recovered for a breach thereof, in the absence of express or implied provisions to the contrary in the statute or ordinance which prescribes the bond, or in the bond itself."

The only decision we find specifically construing a bond of the nature and type here concerned is *People ex rel. B.H. Schull, Director of Mines and Minerals v. Massachusetts Bonding and Insurance Co.* (Ill.) 122 N.E.2d. 185, holding that where a bond, which has been executed as a condition to the issuance of a permit to drill an oil well contained the condition that the principal would fully comply with Oil and Gas Act of Illinois, where the principal had failed to restore the surface of the well site to its former condition as required by such act, the bond would not be read as an undertaking to indemnify the state for actual damages sustained by its breach but would be read as fixing a penalty to be recovered upon a breach thereof without regard to actual damages.

Applying the reasoning of that court to the instant case, it would be our opinion that the full amount of the bond could be recovered for breach as a penalty. We do not, however, believe it would be possible to recover an amount in excess of the terms of the bond, by reason of damages greater than ten thousand dollars. (See section 22-0303 of the North Dakota Revised Code of 1943) insofar as no provision is made for identification of injured parties, in the surety's contract, in the applicable statutes or in the rules of the commission.

The bond form in its terms purports to cover full compliance with chapter 38-08 of the North Dakota Revised Code of 1943 and the Rules and Regulations of the Industrial Commission of the State of North Dakota prescribed to govern the production of oil and gas on state and private lands within the State of North Dakota. Note the statement in the opinion of this office to your office of date August 13, 1956, in regard to this bond that: ". . . . it is the opinion of this office that the Commission is given sufficient authority by chapter 38-08 generally and section 38-0804, subsection 5, specifically to justify requirement of a drilling bond as broad as the form of bond submitted."

The surety would have rights to protect his own interest (i.e. to see that he would not be subjected to the penalty of the bond) by either taking action against the operator to bring the well into compliance with the statutes and rules, or by personal corrective action, however, such rights and the extent of same would be a matter between the operator and the surety.

There is no provision and we believe no authority either in the rules, the statutory provision or the terms of the bond that could be utilized to force action to be taken by the surety except, of course, the penalty of the bond. Assuming that there are violations of the statutes and rules covered in the terms of the bond, action could be brought to collect the full amounts of the penalty prescribed by the bond.

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Attorney General