

July 21, 1931

Mr. George W. Comparet,
Secretary, Arizona Highway Commission,
Phoenix, Arizona.

My dear Sir:

In reply to your letter of the 21st inst. inquiring of me as to what Highway officers and officials should have individual bonds filed with the Secretary of State and those who may be carried on schedule bonds, I advise you as follows:

Section 71, Revised Code 1928, provides as follows:

"Bonds, joint and several; condition.
All official bonds shall be in form, joint and several, and made payable to the state of Arizona, and the condition shall be that the principal will, well, truly, and faithfully perform all official duties then required, or as may be imposed on him, by law. Such bond must be signed by the principal and at least two sureties or a qualified surety company, and shall comply and be subject to the law governing the bond of such officer."

Section 65 Revised Code 1928, provides:

"Where recorded; oath of subordinates.
The official oaths of all state officers shall be filed and recorded in the office of the Secretary of State. Oaths of notaries public and of county and precinct officers shall be filed and recorded in the office of the county recorder, except that of the recorder, which shall be filed with the clerk of the board of supervisors. Deputies, clerks and subordinate officers must, within ten days after receiving notice of their appointment, take and file an oath in the manner required of their principals.

Section 68 Revised Code 1928 provides:

"Manner or approval; time and place of filing.
The approval of every official bond must be indorsed thereon, signed by the officer approving the same, and filed within the time prescribed for filing the oath in the office in which the official oath of such office is filed, except

that the bonds of deputies or employees shall be filed with the officer appointing such deputy or employee. No fee shall be charged for the filing or recording thereof."

Section 1564, Revised Code 1928 provides as follows:

"Oaths and bonds. Before entering upon the discharge of their duties, the members of the commission, the state engineer and the deputy shall take and subscribe to the oath of office. Members of the commission shall execute bonds in the sum of ten thousand dollars each, to be approved by the governor; the state engineer and the deputy shall execute bonds in the sum of fifty thousand dollars to be approved by the commission; other employees of the department shall execute such bonds as may be required and approved by the state engineer. The bonds shall be payable to the state of Arizona, and conditioned for the faithful performance of the duties of such commissioner, engineer or employee."

From the foregoing sections, it is apparent that all bonds executed by any state officer must be signed by the principal and at least two sureties or a recognized surety company.

As I understand it, a principal is not required to sign a schedule bond. This requirement should be met in all respects, but may be met in different forms. If you desire, I shall be glad to work out with you how these bonds may be perfected to comply with the law if any employees are now covered by schedule bonds.

As you note from Section 68 supra, the approval of every official bond must be endorsed thereon and filed in the office in which the official oath of such officer is filed. Thus, every officer of the Arizona Highway Department required to file an oath, must file his separate bond with the secretary of state, if such oath is filed with the secretary of state.

By Section 1564, supra, it is required that the members of the commission, the State Engineer and the deputy shall take and subscribe to the oath of office. No mention is made as to where the bonds of these officers shall be filed. The general provision in this case is controlling and the same should be filed with the secretary of state.

The Secretary of the Arizona State Highway Commission and the Superintendent of Motor Vehicles are officers within

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the meaning of the laws of this state and should file their bonds with the Secretary of State.

Bonds may be required of other persons employed by the Department, but I do not believe that it is necessary that the same be filed with the Secretary of State, since those enumerated above are the only ones which the law directly requires to file their bonds with the Secretary of State.

You have advised me that in the past the Department has placed all of its employees, including the above enumerated officers, on a schedule bond. It is my opinion that the surety on this bond cannot escape a liability upon a default of any person included therein by reason of the fact that the same is not signed by the principal, but I believe as quickly as possible steps should be taken to adequately protect the State in this respect.

Very truly yours,

Attorney General,

By
Assistant Attorney General.

RBS:M