

# The State of South Carolina



## Office of the Attorney General

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August 31, 1990

The Honorable John T. Campbell  
Secretary of State  
State of South Carolina  
Post Office Box 11350  
Columbia, South Carolina 29211

Dear Mr. Secretary:

As you are aware, your letter of August 7, 1990 to Attorney General Medlock was referred to me for review. In that letter, you made reference to the fact that, pursuant to the provisions of 1976 S. C. Code Ann., Section 39-19-20, public warehousemen are required to post a bond so as to provide some assurance that such warehousemen will faithfully perform the duties imposed upon them. You inquired as to whether a warehouseman may provide, in lieu of a bond, a letter of credit issued by a bank.

In pertinent part, Section 39-19-20 provides that:

Every person or corporation authorized to become a public warehouseman shall give bond in a surety company authorized to do business in this State in an amount equal to ten per cent of the estimated value of the goods for which such warehouseman will provide storage, such bond to be conditioned for the faithful performance of the duties of a public warehouseman and to be given to the Secretary of State, who shall cause a copy of it to be filed with the clerk of the court in each county in which such warehouseman proposes to maintain a warehouse.

The only form of security authorized by the plain language of Section 39-19-20 is a bond. Where the language of a statute is

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clear and unambiguous, it must be held to mean what it plainly says. Luck v. Pencar, Ltd, 282 S.C. 643, 320 S.E.2d 711. Consequently, the quoted language of Section 39-19-20 must be held to mean that a public warehouseman may not provide a letter of credit issued by a bank in lieu of a bond.

This conclusion is reinforced by the action taken by the General Assembly during the most recent legislative session. To effect certain changes in statutes governing the State Warehouse System, the General Assembly enacted Act No. 436. Act No. 436 amends Title 39 of the 1976 Code by repealing Chapter 21 and by adding a Chapter 22. In relevant part, Section 39-22-20 provides that:

To safeguard the interest of holders of warehouse receipts issued under this chapter, Chapter 19 of this title, and Chapter 7 of Title 36, the department shall require a surety bond or equivalent security from the applicant for a warehouse license for the faithful performance of his duties. (emphasis supplied).

Significantly, the legislature, while making provision for security equivalent to a bond in the new Chapter 22, did not see fit to amend Chapter 19 to permit a similar alternative to the requirement of a bond. In view of the principle of statutory construction that a legislature is presumed to have acted with full knowledge of prior and existing law concerning a particular subject matter<sup>1</sup>, it would seem to follow that the legislature's failure to amend Chapter 19 to provide for an alternative to a bond, while, at the same time, authorizing such an alternative in Chapter 22, is clear evidence of legislative intent that public warehousemen continue to post a bond, and no other form of security, with the Secretary of State.

I trust that you will find the foregoing information to be responsive to your inquiry. Please contact me if I may be of further assistance.

Very truly yours,





Wilbur E. Johnson  
Assistant Attorney General

WEJ/fc

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REVIEWED AND APPROVED BY:

  
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Opinions

1. See: Bell v. S. C. State Highway Dept., 204 S.C. 462, 30 S.E.2d 65, (1944); Poteat v. Butler, 231 Ga. 187, 200 S.E.2d 741, (1973)