1979 S.C. Op. Atty. Gen. 76 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-59, 1979 WL 29065

Office of the Attorney General

State of South Carolina
Opinion No. 79-59
March 28, 1979

***1 SUBJECT: Banks and Banking; Securities; Surety**
A bond secured by personal negotiable securities held in trust by a third-party banking institution and in an amount sufficient to cover the bond does meet the requirement of § 34–3–50 of the South Carolina Code of Laws, 1976.

TO: GRADY L. PATTERSON, JR.
Chairman
South Carolina State Board of
Financial Institutions

QUESTION PRESENTED:

Is § 34–3–50 of the Code of Laws of South Carolina (1976), which requires all active officials and employees of any State bank to be bonded, complied with by setting aside personal negotiable securities in trust in a third-party banking institution in an amount sufficient to meet the bond requirement?

AUTHORITIES:

§§ 8–3–80, 21–19–40, 23–11–30, 34–3–50, and 34–3–240, Code of Laws of South Carolina (1976);

§ 8612, Code of Laws of South Carolina (1932);

Anderson v. Aetna Casualty and Surety Company, 175 S.C. 254, 178 S.E. 819 (1934);

Brenard Manufacturing Company v. Gibbs, 9 La.App. 137, 119 So. 483 (1928);

Buxton and Beck v. Board of County Commissioners of Ford County, 170 Kan. 148, 223 P.2d 734 (1950);

AUTHORITIES, CONT.:

Gullick v. Slaten, 169 S.C. 244, 168 S.E. 697 (1933);

Walter Pratt and Company v. S. J. Langston Merchantile Company, 111 Mo.App. 96, 85 S.W. 134 (1905);

12 Am.Jur.2d Bonds § 22 (1964);

11 C.J.S. Bonds § 9b (1938).

DISCUSSION:

Section 34–3–50 of the Code of Laws of South Carolina (1976) provides that:

All active officials and employees of any State bank shall be bonded. The bonds shall be reviewed and approved or disapproved in writing annually by the board of directors.

The question presented is whether a bond secured by negotiable securities held in trust by a third-party banking institution issufficient to meet the requirements of § 34–3–50.

This question appears to be one of first impression in South Carolina. The South Carolina Supreme Court has not considered the question of whether a surety is required on a bond in the absence of a statutory provision either expressly or impliedly requiring such surety. The general rule is that unless the statute which requires a bond also requires a surety on the bond, the fact that it is without surety is immaterial so long as the instrument comes under the legal definition of a bond. 12 Am.Jur.2d Bonds § 22 (1964); 11 C.J.S. Bonds § 9b (1938); Buxton and Beck v. Board of County Commissioners of Ford County, 170 Kan. 148, 223 P.2d 734 (1950); See Also, Brenard Manufacturing Company v. Gibbs, 9 La.App. 137, 119 So. 483 (1928) and Walter Pratt and Company v. S. J. Langston Merchantile Company, 111 Mo.App. 96, 85 S.W. 134 (1905). Although several Code sections which require bonds specifically refer to sureties (see, e.g., § 8–3–80 (certain county officials) and § 23–11–30 (sheriffs)), the statute in question, § 34–3–50, does not. It merely requires a bond approved by the Board of directors of the bank. The fact that the legislature expressly required a surety or sureties in other statutes lends support to the conclusion that none is necessarily required by the instant statute. Buxton and Beck v. Board of County Commissioners of Ford County, supra. It should also be noted that § 34–3–240, in conferring powers upon the board of directors of State banks, provides that the board may:

***2** (1) Appoint all necessary officers and employees of the corporation, fix their compensation and take security for the faithful discharge of their respective duties. (Emphasis Added)

The board is not limited to a particular form of security, such as one having a surety. However, the thrust of the section is that sufficient security be provided.

In Gullick v. Slaten, 169 S.C. 244, 168 S.E. 697 (1933), the defendant was appointed guardian of the estate of her minor son upon the death of her former husband. Section 8612 of the 1932 Code (now § 21–19–40 of the 1976 Code) provided:

The judge of probate, on appointing a guardian to any estate, shall require him to enter into bond to himself and his successors in a penalty of double the amount of such estate, and shall have the same power, as to relieving the sureties of a guardian, which is given to him in the case of relieving the sureties of an administrator. (Emphasis Added)

The defendant initially executed in favor of the probate judge, a mortgage on property she purchased partially with the funds she held in trust as guardian. The Supreme Court held that the spirit of § 8612, if not the letter of the law, contemplated proper sureties on the bond of a guardian. The court did not think that a judge of probate could accept directly from the guardian a mortgage of real estate in lieu of a proper bond. Also significant was the fact that 'the law has never intended that a judge of probate should accept from a guardian, as the only surety given by the guardian, a mortgage of real estate, purchased in whole or in part with money belonging to the estate of the ward'. Id. at 252, 168 S.E. at 700. Since the statute in that case specifically referred to sureties and the funds sought to be protected were the source of the security, Gullick is not directly applicable to the instant situation. The arrangement contemplated in the instant case involves the use of personal negotiable securities held in trust as security.

The South Carolina Supreme Court in Anderson v. Aetna Casualty and Surety Company, 175 S.C. 254, 178 S.E. 819 (1935), defined a bond as follows:

A bond is an obligation—a contract. If it provides for the payment of money in certain circumstances, and the obligor fails to pay it as by the terms of the bond, an action for its recovery is an action at law on a money demand.

A bond is nothing more than an agreement or contract under seal to pay money, or to do some other thing.

Id. at 274, 178 S.E. at 826.

Although the bond which was the subject of litigation in that case had a surety as a party to it, the definition of bond as used by the Court does not appear to consider a surety an essential aspect of a bond.

CONCLUSION:

It is, therefore, the opinion of this Office that the bond required by § 34–3–50 of the 1976 Code need not be provided by a bonding company. However, a bond is nevertheless required.

Therefore, the officials and employees of the State bank would have to be subject to a valid bond instrument. In this case, the security would merely take a different form from that normally provided when a surety is involved.

***3** It should be noted, however, that without reviewing the specific bond and trust instruments, no opinion can be expressed as to whether any particular plan complies with § 34–3–50.

Richard B. Kale, Jr.
Assistant Attorney General

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