

CHAPTER 19.

OFFICIAL OATHS AND BONDS.

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19.01 Oaths and bonds. (1) **FORM OF OATH.** Every official oath required by section 28 of article IV of the constitution or by any statute shall be in writing, subscribed, sworn to, and except as provided otherwise by sections 256.02 and 256.29, shall be in substantially the following form:

STATE OF WISCONSIN, } ss.
County of

The undersigned, who has been elected (or appointed) to the office of, but has not yet entered upon the duties thereof, swears (or affirms) that he will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully discharge the duties of said office to the best of his ability.

Subscribed and sworn to before me this day of, 19..

.....
(Signature)

(2) **FORM OF BOND.** Every official bond required of any public officer shall be in substantially the following form:

We, the undersigned, jointly and severally, undertake and agree that, who has been elected (or appointed) to the office of, will faithfully discharge the duties of his said office according to law, and will pay to the parties entitled to receive the same, such damages, not exceeding in the aggregate dollars, as may be suffered by them in consequence of his failure so to discharge such duties.

Dated, 19....

.....
(Principal)

.....
(Surety)

Any further or additional official bond lawfully required of any public officer shall be in the same form and it shall not affect or impair any official bond previously given by him for the same or any other official term. Where such bond is in excess of the sum of twenty-five thousand dollars, the officer may give two or more bonds.

(3) **OFFICIAL DUTIES DEFINED.** The official duties referred to in subsections (1) and (2) include performance to the best of his ability by the officer taking the oath or giving the bond of every official act required, and the nonperformance of every act forbidden, by law to be performed by him; also, similar performance and nonperformance of every act required of or forbidden to him in any other office which he may lawfully hold or exercise by virtue of his incumbency of the office named in his official oath or bond. Except as provided otherwise by subsection (3) of section 59.22 the duties mentioned in any such oath or bond include, further, the faithful performance by all persons appointed or employed by such officer either in his principal or his said subsidiary office, of their respective duties and trusts therein.

(4) **WHERE FILED.** Official oaths and bonds shall be filed,

(a) In the office of the secretary of state: Of all members and officers of the legislature; of the governor, lieutenant governor and state superintendent; of the justices, reporter and clerk of the supreme court; of the judges and reporters of the circuit courts; of all notaries public; of every officer, except the secretary of state, state treasurer, attorney-general and director of purchases, whose compensation is paid in whole or in part out of the state treasury, including every member or appointee of a board or commission whose compensation is so paid; and of every deputy or assistant of an officer who files with the secretary of state;

(b) In the executive office: Of the secretary of state, state treasurer, attorney-general and director of purchases;

(c) In the office of the clerk of the circuit court of any county: Of the county judge, of all court commissioners, of all divorce counsel, of all justices of the peace, and of all other judges or judicial officers elected or appointed in and for such county, or whose jurisdiction is limited thereto;

(d) In the office of the county clerk of any county: Of all county officers elected or appointed in and for such county, other than those enumerated in paragraph (e), and of all officers whose compensation is paid out of the treasury of such county. But the official bond required of any county officer mentioned in chapter 59 shall, before filing, be recorded at his own cost in the office of the register of deeds of his county. The members of the governing board, and the superintendent and other officers of any joint county school, county hospital, county sanatorium, county asylum or other joint county institution shall file in the county in which the buildings of such institution are located;

(dd) All bonds specified in paragraphs (e) and (d) of this subsection and all bonds of any county employee required by statute or county ordinance to be bonded, shall be approved by the district attorney as to amount, form and execution before such bonds shall be accepted for filing. It shall be the duty of the clerk of the circuit court and the county clerk respectively, to notify in writing the county board or chairman thereof within five days after the entry of any judicial or county officer specified in paragraphs (e) and (d) of this subsection upon his term of office or after any county employee required to be bonded has entered upon his employment, stating whether or not the required bond has been furnished, and such notice shall be published with the proceedings of the county board.

(e) In the office of any town clerk: Of all officers elected or appointed in and for such town except the town clerk who shall file in the office of the town treasurer;

(f) In the office of any city clerk: Of all officers elected or appointed in and for such city except the city clerk who shall file in the office of the city treasurer;

(g) In the office of any village clerk: Of all officers elected or appointed in and for such village, except the village clerk who shall file in the office of the village treasurer;

(h) The official oath and bond of any officer of a school district or of an incorporated school board shall be filed with the clerk of such school district or the clerk of such incorporated school board.

(5) TIME OF FILING. Every public officer required to file an official oath or an official bond shall file the same before entering upon the duties of his office; and when both are required, both shall be filed at the same time.

(6) CONTINUANCE OF OBLIGATION. Every such bond continues in force and is applicable to official conduct during the incumbency of the officer filing the same and until his successor is duly qualified and installed.

(7) INTERPRETATION. This section shall not be construed as requiring any particular officer to furnish or file either an official oath or an official bond. It is applicable to such officers only as are elsewhere in these statutes or by the constitution or by special, private or local law required to furnish such an oath or bond. Provided, however, that whether otherwise required by law or not, an oath of office shall be filed by every member of any board or commission appointed by the governor, and by every administrative officer so appointed, also by every secretary and other chief executive officer appointed by such board or commission.

(8) PREMIUM ON BOND ALLOWED AS EXPENSE. The state and any county, town, village, city or school district may pay the cost of any official bond furnished by an officer or employee thereof pursuant to law or any rules or regulations requiring the same if said officer or employee shall furnish a bond with a licensed surety company as surety, said cost not to exceed the current rate of premium per annum. The cost of any such bond to the state shall be charged to the proper expense appropriation. [1935 c. 275; 1937 c. 429; 1943 c. 351; 1931 c. 45]

Note: No consideration need be expressed in a bond executed pursuant to and in substantial conformance with the requirements of a statute. Stockton v. Dombrowski, 207 W 71, 240 NW 774.

The receipt of money from the state by the superintendent of a state school through his improper certification of a pay roll which included the name of a teacher who was on an unauthorized leave of absence constituted a breach of the superintendent's official bond securing the performance of his duties, although he may have acted in good faith and did not use the money personally, and the surety on such bond was entitled to recover from the superintendent the amount paid to the state in compromise settlement of the state's claim on account of such breach. United States F. & G. Co. v. Hooper, 219 W 373, 263 NW 184.

The paragraph of the city's complaint charging a wholly illegal and unauthorized use of city funds by the deceased city treasurer and a broker did not state a cause of action against the sureties on the treasurer's official bonds, since the resulting profits did not attach as an accretion to the funds for

which the treasurer was officially accountable, and hence the failure to account for the profits was not a breach of the bonds; but the paragraph of the complaint charging the realization of unaccounted profits from the sale of securities lawfully purchased with city funds did state a cause of action against the sureties on the treasurer's bonds, since such profits did attach as an accretion to the funds lawfully invested so as to make the failure to account for the profits a breach on the bonds. Milwaukee v. Drew, 220 W 511, 263 NW 683.

A bond of a special deputy commissioner of banking, for the faithful discharge of the duties of his office in assisting in liquidating and distributing the assets of a delinquent bank under 220.08 is an "official bond." Banking Comm. v. National Surety Corp., 243 W 542, 11 NW (2d) 171.

An official bond of a public officer, in the form prescribed by 19.01 (2), is not a "sealed instrument;" and the mere fact that the corporate seal of the surety company was affixed to the official bond of an assistant city treasurer did not, without anything further, make the bond a sealed instrument, in re-

spect to application of the statute of limitations. Maxwell v. Stack, 246 W 487, 17 NW (2d) 603.

Public officer is insurer of public funds lawfully in his possession and is liable for

losses which occur even without his fault. 26 Atty. Gen. 227.

See note to 46.05, citing 26 Atty. Gen. 328.

See note to 49.03, citing 30 Atty. Gen. 440.

19.015 Actions by the state or a municipality. Whenever the state or any county, town, city, village, or school district is entitled to recover any damages, money, penalty or forfeiture on any official bond, it shall be the duty of the attorney-general, county chairman, town chairman, mayor, village president or school director, respectively, to prosecute or cause to be prosecuted all necessary actions in the name of the state, or such municipality, against the officer giving such bond and his sureties for the recovery of such damages, money, penalty, or forfeiture.

19.02 Actions by individuals. Any person injured by the act, neglect or default of any officer, except the state officers, his deputies or other persons which constitutes a breach of the condition of the official bond of such officer, may maintain an action in his own name against such officer and his sureties upon such bond for the recovery of any damages he may have sustained by reason thereof, without leave and without any assignment of any such bond.

19.03 Security for costs; notice of action. (1) Every person commencing an action against any officer and his sureties upon his official bond, except the obligee named therein, shall give security for costs by an undertaking as prescribed in section 271.28 (3) or 307.09, respectively, and a copy thereof shall be served upon the defendants at the time of the service of the summons. In all such actions if final judgment be rendered against the plaintiff the same may be entered against the plaintiff and the sureties to such undertaking for all the lawful costs and disbursements of the defendants in such action, by whatever court awarded.

(2) The plaintiff in any such action shall, within ten days after the service of the summons therein, deliver a notice of the commencement of such action to the officer who has the legal custody of such official bond, who shall file the same in his office in connection with such bond.

19.04 Other actions on same bond. No action brought upon an official bond shall be barred or dismissed by reason merely that any former action shall have been prosecuted on such bond, but any payment of damages made or collected from the sureties or any of them on any judgment in an action previously begun by any party on such bond shall be applied as a total or partial discharge of the penal sum of such bond, and such defense or partial defense may be pleaded by answer or supplemental answer as may be proper. The verdict and judgment in every such action shall be for no more than the actual damages sustained or damages, penalty or forfeiture awarded, besides costs. The court may, when it shall be necessary for the protection of such sureties, stay execution on any judgment rendered in such actions until the final determination of any actions so previously commenced and until the final determination of any other action commenced before judgment entered in any such action.

19.05 Execution; lien of judgment. Whenever a judgment shall be rendered against any officer and his sureties on his official bond in any court other than the circuit court of the county in which such official bond is filed, no execution for the collection thereof shall issue from such other court unless the plaintiff therein, his agent or attorney shall make and file with such court an affidavit showing that no other judgment has been rendered in any court in an action upon such bond against the sureties therein which remains in whole or in part unpaid and that no other action upon such bond against said sureties was pending and undetermined in any other court at the time of the entry of such judgment; but every such judgment may be docketed in other courts and in other counties, shall constitute a lien, and may be enforced, in all respects the same as if it were an ordinary judgment, for the recovery of money, except as provided otherwise in this section.

19.06 Sureties, how relieved. Whenever several judgments shall be recovered against the sureties on any official bond in actions which shall have been commenced before the date of the entry of the last of such judgments the aggregate of which, exclusive of costs, shall exceed the sum for which such sureties remain liable at the time of the commencement of such actions, they may discharge themselves from all further liability upon such judgments by paying into court the sum for which they are then liable, together with the costs recovered on such judgments; or the court may, upon motion supported by affidavit, order that no execution for more than a pro rata share of such judgments shall be issued thereon against the property of such sureties or either of them and that upon payment or collection of such pro rata share they shall be discharged from the judgment or judgments upon which such pro rata share shall be paid or collected. When the

money is paid into court by the sureties as above specified the same, exclusive of the costs so paid in, shall be distributed by an order of the court to the several plaintiffs in such judgments in proportion to the amount of their respective judgments. But every judgment shall have precedence of payment over all judgments in other actions commenced after the date of the recovery of such judgment.

19.07 Bonds of public officers and employes. (1) CIVIL SERVICE EMPLOYES; BLANKET BONDS. (a) The surety bond of any civil service employe of a county, city or village may be canceled in the manner provided by subsection (3) of this section.

(b) Any number of officers, department heads or employes, may be combined in a schedule bond, where such bond is to be filed in the same place, and in the event such bond is executed by a corporate surety company, payment of the premium therefor is to be made from the same fund or appropriation prescribed in section 19.01.

(2) CONTINUATION OF OBLIGATION. Unless canceled pursuant to the provisions of this section, every such bond shall continue in full force and effect.

(3) CANCELLATION OF BOND. (a) Any county or city by their respective governing body may cancel such bond or bonds of any one employe or any number of employes by giving written notice to the surety by registered mail, such cancellation to be effective fifteen days after receipt of such notice.

(b) When a surety, either personal or corporate, on any such bond, shall desire to be released from such bond, he or it may give notice in writing that he or it desires to be released by giving written notice by registered mail, to the clerk of the respective county or city, and such cancellation shall be permitted if approved by the governing body thereof, such cancellation to be effective fifteen days after receipt of such notice. The provisions of this section shall not be so construed as to operate as a release of the sureties for liabilities incurred previous to the expiration of said fifteen days' notice.

(c) Whenever a surety bond is canceled in the manner provided by this section, a pro rata refund shall be made of the premium paid thereon. [1937 c. 429]