

Article 72.

Official Bonds.

§ 58-72-1. Irregularities not to invalidate.

When any instrument is taken by or received under the sanction of the board of county commissioners, or by any person or persons acting under or in virtue of any public authority, purporting to be a bond executed to the State for the performance of any duty belonging to any office or appointment, such instrument, notwithstanding any irregularity or invalidity in the conferring of the office or making of the appointment, or any variance in the penalty or condition of the instrument from the provision prescribed by law, shall be valid and may be put in suit in the name of the State for the benefit of the person injured by a breach of the condition thereof, in the same manner as if the office had been duly conferred or the appointment duly made, and as if the penalty and condition of the instrument had conformed to the provisions of law: Provided, that no action shall be sustained thereon because of a breach of any condition thereof or any part of the condition thereof which is contrary to law. (1842, c. 61; R.C., c. 78, s. 9; 1869-70, c. 169, s. 16; Code, s. 1891; Rev., s. 279; C.S., s. 324.)

§ 58-72-5. Penalty for officer acting without bond.

Every person or officer of whom an official bond is required, who presumes to discharge any duty of his office before executing such bond in the manner prescribed by law, is liable to a forfeiture of five hundred dollars (\$500.00) to the use of the State for each attempt so to exercise his office. The clear proceeds of forfeitures provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (R.C., c. 78, s. 8; Code, s. 1882; Rev., s. 278; C.S., s. 325; 1998-215, s. 91.)

§ 58-72-10. Condition and terms of official bonds.

Every treasurer, sheriff, coroner, register of deeds, surveyor, and every other officer of the several counties who is required by law to give a bond for the faithful performance of the duties of his office, shall give a bond for the term of the office to which such officer is chosen. (1869-70, c. 169; 1876-7, c. 275, s. 5; Code, s. 1874; 1895, c. 207, s. 4; 1899, c. 54, s. 54; Rev., s. 308; C.S., s. 326; 1985, c. 438.)

§ 58-72-15. When county may pay premiums on bonds.

In all cases where the officers or any of them named in G.S. 58-72-10 are required to give a bond, the county commissioners of the county in which said officer or officers are elected are authorized and empowered to pay the premiums on the bonds of any and all such officer or officers. The board of commissioners of any county are further authorized and empowered to require individual or blanket bonds for any or all assistants, deputies or other persons regularly employed in the offices of any such county officer or officers, such bond or bonds to be conditioned upon faithful performance of duty, and, in the event of such requirement, to pay the premiums on such individual or blanket bonds. (1937, c. 440; 1953, c. 799.)

§ 58-72-20. Annual examination of bonds; security strengthened.

The bonds of the officers named in G.S. 58-72-10 shall be carefully examined on the first Monday in December of every year, and if it appears that the security has been impaired, or for any cause become insufficient to cover the amount of money or property or to secure the faithful performance of the duties of the office, then the bond shall be renewed or strengthened, the

insufficient security increased within the limits prescribed by law, and the impaired security shall be made good; but no renewal, or strengthening, or additional security shall increase the penalty of said bond beyond the limits prescribed for the term of office. (1869-70, c. 169; 1876-7, c. 275, s. 5; Code, s. 1874; 1895, c. 207, s. 4; 1899, c. 54, s. 54; Rev., s. 308; C.S., s. 327.)

§ 58-72-25. Effect of failure to renew bond.

Upon the failure of any such officer to make such renewal of his bond, it is the duty of the board of commissioners, by an order to be entered of record, to declare his office vacant, and to proceed forthwith to appoint a successor, if the power of filling the vacancy in the particular case is vested in the board of commissioners; but if otherwise, the said board shall immediately inform the proper person having the power of appointment of the fact of such vacancy. (1869-70, c. 169, s. 2; Code, s. 1875; Rev., s. 309; C.S., s. 328.)

§ 58-72-30. Justification of sureties.

Every surety on an official bond required by law to be taken or renewed and approved by the board of commissioners shall take and subscribe an oath before the chairman of the board or some person authorized by law to administer an oath, that he is worth a certain sum (which shall be not less than one thousand dollars (\$1,000)) over and above all his debts and liabilities and his homestead and personal property exemptions, and the sum thus sworn to shall in no case be less in the aggregate than the penalty of the bond. But nothing herein shall be construed to abridge the power of the said board of commissioners to require the personal presence of any such surety before the board when the bond is offered, or at such subsequent time as the board may fix, for examination as to his financial condition or other qualifications as surety. (1869-70, c. 169, s. 3; 1879, c. 207; Code, s. 1876; 1889, c. 7; 1891, c. 385; 1901, c. 32; Rev., s. 310; C.S., s. 329.)

§ 58-72-35. Compelling justification before judge; effect of failure.

When oath is made before any judge of the superior court by five respectable citizens of any county within his district that after diligent inquiry made they verily believe that the bond of any officer of such county, which has been accepted by the board of commissioners, is insufficient either in the amount of the penalty or in the ability of the sureties, it is the duty of such judge to cause a notice to be served upon such officer requiring him to appear at some stated time and place and justify his bond by evidence other than that of himself or his sureties. If this evidence so produced fails to satisfy the judge that the bond is sufficient, both in amount and the ability of the sureties, he shall give time to the officer not exceeding 20 days, to give another bond, fixing the amount of the new bond, when there is a deficiency in that particular. And upon failure of the said officer to give a good bond to the satisfaction of the judge within the 20 days, the judge shall declare the office vacant, and if the appointment be with himself, he shall immediately proceed to fill the vacancy; and if not, he shall notify the persons having the appointing power that they may proceed as aforesaid. (1874-5, c. 120; Code, s. 1885; Rev., s. 316; C.S., s. 330.)

§ 58-72-40. Successor bonded; official bonds considered liabilities.

The person so appointed shall give bond before the judge, and the bond so given shall in all respects be subject to the requirements of the law in relation to official bonds; and all official bonds shall be considered debts and liabilities within the meaning of G.S. 58-72-30. (1874-5, c. 120, s. 2; Code, s. 1886; Rev., s. 317; C.S., s. 331.)

§ 58-72-45. Judge to file statement of proceedings with commissioners.

When a vacancy is declared by the judge, he shall file a written statement of all his proceedings with the clerk of the board of commissioners, to be recorded by him. (1874-5, c. 120, s. 3; Code, s. 1887; Rev., s. 318; C.S., s. 332.)

§ 58-72-50. Approval, acknowledgment and custody of bonds.

The approval of all official bonds taken or renewed by the board of commissioners shall be recorded by the clerk to the board. Each bond shall be acknowledged by the parties thereto or proved by a subscribing witness, before the chairman of the board of commissioners, or before the clerk of the superior court, and filed with the clerk of the superior court with the approval of the commissioners endorsed thereon and certified by the chairman of the board of commissioners. Provided that an official bond executed as surety by a surety company authorized to do business in this State need not be acknowledged upon behalf of the surety when that bond is executed under seal in the name of the surety by an agent or attorney-in-fact by authority of a power of attorney duly recorded in the office of the register of deeds of that county. (1869-70, c. 169, s. 4; 1879, c. 207, s. 2; Code, s. 1877; Rev., s. 311; C.S., s. 333; 1957, c. 1011; 2009-570, s. 35; 2012-18, s. 1.9; 2023-103, s. 9(a).)

§ 58-72-55. Clerk records vote approving bond; penalty for neglect.

It is the duty of the clerk of the board of commissioners to record in the proceedings of the board the names of those commissioners who are present at the time of the approval of any official bond, and who vote for such approval. Every clerk neglecting to make such record, besides other punishment, shall forfeit his office. Any commissioner may cause his written dissent to be entered on the records of the board. (1790, c. 327, P.R.; 1809, c. 777, P.R.; R.C., c. 78, s. 7; 1869-70, c. 169, s. 8; Code, s. 1881; Rev., s. 314; C.S., s. 336.)

§ 58-72-60. When commissioner liable as surety.

Every commissioner who approves an official bond, which he knows to be, or which by reasonable diligence he could have discovered to have been, insufficient in the penal sum, or in the security thereof, shall be liable as if he were a surety thereto, and may be sued accordingly by any person having a cause of action on said bond. (1869-70, c. 169, s. 6; Code, s. 1879; Rev., s. 313; C.S., s. 335.)

§ 58-72-65. Record of board conclusive as to facts stated.

In all actions under G.S. 58-72-60 a copy of the proceedings of the board of commissioners in the particular case, certified by their clerk under his hand and the seal of the county, is conclusive evidence of the facts in such record alleged and set forth. (1869-70, c. 169, s. 8; Code, s. 1881; Rev., s. 314; C.S., s. 336.)

§ 58-72-70. Person required to approve bond not to be surety.

No member of the board of commissioners, or any other person authorized to take official bonds, shall sign as surety on any official bond upon the sufficiency of which the board of which he is a member may have to pass. (1874-5, c. 120, s. 3; Code, s. 1887; Rev., s. 315; C.S., s. 337.)