

CHAPTER 574

BONDS, FINES, AND FORFEITURES

574.01 BONDS, REQUISITES AND EXECUTION.

As between the surety and creditors of a public contractor the doctrine of substantial performance has no application; there must be strict performance of the contract. General rules for construction of written instruments govern the interpretation of a statutory bond. *Guaranteed Gravel Co. v Aetna Casualty Co.* 174 M 366, 219 NW 546.

The depository bond was given pursuant to section 427.01. This statute, though not embraced within the written language, must be construed as a part of the bond. *City of Ortonville v Hahn*, 181 M 271, 232 NW 320; *City of St. Cloud v Willenbring*, 195 M 70, 261 NW 585.

When a contract of surety is made, an obligation is implied on the part of the principal that he will indemnify the surety for any payment the latter may make under the contract; and where a contract is illegal only in part and the illegal part is severable, the remainder will be enforced. *Hartford Indemnity Co. v Dahl*, 202 M 410, 278 NW 591.

Insurer's defense of assured as affecting insurer's right to deny liability under the policy. 15 MLR 682.

Creditors' remedies relating to choses in action and corporate stock. 30 MLR 616.

574.02 STATE MAY TAKE FIDELITY INSURANCE.

A bond should not be prescribed which purports to cover all employees, but does not list the names or positions of certain employees. OAG Nov. 1, 1945 (980-A-4).

Surety's liability for wrongful acts of officers. 9 MLR 487.

574.03 PAYMENT OF PREMIUM.

Governmental responsibility for torts. 26 MLR 322.

574.12 MODES OF JUSTIFICATION.

Sections 574.01 and 574.12 prescribing the requirements of official bonds as to the number of sureties and their justification have no application other than statutory official bonds. *Blued v Barnard*, 120 M 399, 139 NW 714.

574.13 STATE AND COUNTY OFFICERS; UNIFORM BOND.

All state and county official bonds must be renewed every two years. The bonds run to the state and must be in statutory form. The acknowledgment of the surety must precede the acknowledgment of the principal and the bond must run for the term of the principal's term of office. OAG Jan. 19, 1944 (45-A).

574.15 SURETY COMPANIES.

Suretyship and the statute of frauds. 31 MLR 1.

574.16 WHEN SURETY TO BE SUBROGATED.

The right of a surety to compete in the distribution of bankrupt principal's assets with creditors secured by bond, where liability on bond has been discharged. 30 MLR 543.

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Right to subrogation; separate sureties or joint wrongdoers. 31 MLR 295.

574.19 COST OF SURETY BONDS; PROPER EXPENSE ITEMS.

The legislature evidently intended to authorize county boards in counties of less than 250,000 inhabitants to choose a surety company to furnish the county treasurer's bond. OAG Nov. 13, 1946 (450-B).

574.20 BONDS, BY WHOM APPROVED.

When a new sheriff was elected and filed his oath and bond prior to January 4, 1943, but the county commissioners did not approve the bond until January 5, the new sheriff took office on January 5, 1943. OAG Feb. 11, 1943 (104-A-13).

Under section 574.20 as amended by L. 1945, c. 317, the West St. Paul city justice should file a copy of his bond with the secretary of state. The city pays the premium on a surety company bond. OAG Dec. 10, 1945 (266-A-2).

574.24 OFFICIAL BONDS, SECURITY TO WHOM; ACTIONS.

Where there is a recovery on an official bond, the surety is chargeable with interest from the date of notice to the surety of a breach of the bond or a demand made thereon. Board v Fogarty, 191 M 9, 252 NW 668.

It is not the duty of the city attorney to bring an action on the part of the city until requested by the council. The city may authorize action on behalf of the city, the council using its sound discretion as to the best interests of the city. OAG April 18, 1947 (59-A-5).

Comity; action on sheriff's bond given in one state cannot be maintained in another. 7 MLR 239.

Subcontractor's right to protection under public contractor's statutory bond. 11 MLR 376.

Criminal recognizance bond; co-sureties; right to contribution. 31 MLR 382.

574.26 CONTRACTORS' BONDS.

Liability of surety on public contractor's bonds to materialmen. 16 MLR 313.

Respective equities and rights under building contractor's bond. 19 MLR 454.

Insurance premiums as an indebtedness within the bond for labor or material. 20 MLR 439.

Liability for loss of extras caused by defect in plans and specifications. 21 MLR 70.

574.27 BIDDERS TO HAVE RIGHT OF ACTION IN CERTAIN CASES.

The plaintiff in submitting its bid for the construction of a school building made a mistake of \$17,941.70 by omitting to include the amount contained in one sheet of its estimate. The bid was accepted. The bid and acceptance constituted a preliminary contract which contemplated a later formal contract. It breached the contract because of inability to furnish a bond. It discovered the mistake three years later and brought suit for relief against its bid and the forfeiture of its certified check deposited with the bid. It was not entitled to relief. Federal Contracting Co. v City of St. Paul, 177 M 329, 225 NW 149.

574.28 APPROVAL AND FILING OF BOND.

Under the circumstances stated in the opinion, a contract for construction by the plaintiff of the exterior superstructure of a new courthouse being built by defendant cannot be construed as requiring the defendant to secure a bond for plaintiff's protection from a third party who was to furnish the stone for said superstructure. In any event, the evidence amply supports a finding that plaintiff waived the giving of such bond. Plaintiff is not entitled to the benefit of the recognized ex-

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ception to the stated rule which applies in cases where a party has refused to complete his contract because of unforeseen and substantial difficulties encountered in the performance thereof, it appearing that the difficulty which arose after performance of the contract was undertaken by plaintiff was anticipated by him before he made the contract. *Zimmerman v County of Rice*, 202 M 54, 277 NW 360.

It is legal to insert in a contract for the construction of a trunk highway a provision relating to minimum wages to be paid. OAG March 16, 1945 (229-E-13).

574.29 ACTION ON BOND.

The purpose of section 574.26 is to protect labor and materialmen who perform labor or material for the execution of a public work. The bond required thereby stands as security for the payment of all obligations incurred by the contractor in the prosecution of the work, and the general rules and principles of the law of suretyship apply to and govern the rights of the parties. As such a bond is given because the statute requires it, it cannot be severed therefrom. The parties are deemed to have contracted with reference thereto. Under section 574.31 no action may be maintained on any such bond unless the claimant shall file the notice in the manner and within the time therein directed and limited. These must be met before the right to bring action on the bond accrues. *Ceco Corp. v Tapager*, 208 M 367, 294 NW 210.

The city discharged its full duty when it required the contractor to furnish the statutory performance bond, and the officers are not "trustees" for the purpose of enforcing any liability accruing through delinquency of the contractor. *Farmers State Bank v Burns*, 212 M 455; 4 NW(2d) 330, 5 NW(2d) 589.

Public contractor's statutory bonds, right of materialman to sue, effect of failure to file notice of claim. 16 MLR 201.

574.31 LIMIT OF TIME TO BRING ACTION.

Under section 574.31 the filing of the notice is a condition precedent to bringing an action on a contractor's bond. *Gilloley v Sampson*, 203 M 233, 291 NW 3; *Ceco Corp. v Tapager*, 208 M 367, 294 NW 210.

Public contractors' statutory bonds; right of materialman to sue surety; effect of failure to file notice of claim. 16 MLR 202.

574.33 ACTIONS FOR FINES, FORFEITURES, AND PENALTIES; COLLUSION.

See, *City of Ortonville v Hahn*, 181 M 271, 232 NW 320, noted under section 574.01.

574.36 SALE OF REPOSSESSED MOTOR VEHICLES.

Buyer's rights, after repossession, regarding damages to property. 17 MLR 103.