CHAPTER 3

Commissions, Oaths and Bonds

**SECTION 8‑3‑10.** Oath and commission prerequisite to assumption of duties.

 It shall be unlawful for any person to assume the duties of any public office until he has taken the oath provided by the Constitution and been regularly commissioned by the Governor.

HISTORY: 1962 Code Section 50‑51; 1952 Code Section 50‑51; 1942 Code Sections 1512, 3042; 1932 Code Sections 1512, 3042; Civ. C. ‘22 Section 733; Cr. C. ‘22 Section 460; Civ. C. ‘12 Section 649; Cr. C. ‘12 Section 535; 1901 (23) 754.

CROSS REFERENCES

Constitutional provision regarding commission of state officers, see SC Const, Art 6, Section 6.

Constitutional provision regarding oath of office, see SC Const, Art 6, Sections 4, 5.

LIBRARY REFERENCES

67 C.J.S., Oaths and Affirmations Sections 1‑7.

67 C.J.S., Officers, Sections 46, 269.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 23, Oath.

Attorney General’s Opinions

The members of the South Carolina Advisory Council on Aging must be commissioned by the Secretary of State upon their appointment by the Lieutenant Governor. S.C. Op.Atty.Gen. (Nov. 3, 2010) 2010 WL 4982605.

NOTES OF DECISIONS

In general 1

1. In general

Cited in State v. McMillan (S.C. 1939) 189 S.C. 444, 1 S.E.2d 626.

**SECTION 8‑3‑20.** Repealed by 1989 Act No. 68, Section 1, eff May 10, 1989.

Editor’s Note

Former Section 8‑3‑20 was entitled “Additional oath of county officers in respect to sharing profits” and was derived from 1962 Code Section 50‑54; 1952 Code Section 50‑54; 1942 Code Section 3044; 1932 Code Section 3044; Civ. C. ‘22 Section 735; Civ. C. ‘12 Section 651; Civ. C. ‘02 Section 583; G. S. 442; R. S. 502; 1829 (6) 384; 1880 (17) 501.

**SECTION 8‑3‑30.** Form of bond which shall be given by all public officers.

 The bond given by any person elected or appointed to any office for which bond is required shall be of the form following:

“State of South Carolina.

 “Know all men by these presents, that we (here insert the names of the person and his sureties) are held and firmly bound unto the State of South Carolina in the penal sum of (insert the amount required by law) dollars, to the payment of which, well and truly to be made, we bind ourselves and each and every of us, our heirs, executors and administrators, firmly by these presents. Sealed with our seal and dated this (insert the day) day of (insert the month) Anno Domini one thousand nine hundred and (insert the year) and in the (insert the year) year of the Independence of the United States of America.

 “Whereas, The above bound (insert the name of the person appointed or elected) hath been appointed (or elected, as the case may be) to the office of (insert the office).

 “Now the condition of the above obligation is such that if the above bound (insert the name of the person appointed or elected) shall well and truly perform the duties of said office, as now or hereafter required by law, during the whole period he may continue in said office, then the above obligation to be void and of none effect or else to remain in full force and virtue.

 “Sealed and delivered in the presence of:

|  |  |
| --- | --- |
|  |  |
|   | “\_\_\_\_\_\_\_\_\_\_, (L.S.) |
| “(Here place name of witness.)” |   |

HISTORY: 1962 Code Section 50‑55; 1952 Code Section 50‑55; 1942 Code Section 3045; 1932 Code Section 3045; Civ. C. ‘22 Section 736; Civ. C. ‘12 Section 652; Civ. C. ‘02 Section 584; G. S. 443; R. S. 504; 1829 (6) 383.

CROSS REFERENCES

Bonds required of magistrates, see Section 22‑1‑150.

Bonds required of magistrates’ employees, see Section 22‑1‑160.

LIBRARY REFERENCES

67 C.J.S., Officers Section 47.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 24, Bond.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Norton v Mulligan (1850) 35 SCL 355. Commissioners of Treasury v Executors of Moore (1806) 4 SCL 51. State v Messervy (1910) 86 SC 503, 68 SE 766. Bolen v National Surety Co. (1918) 108 SC 403, 94 SE 1049. State v Fidelity & Deposit Co. (1920) 114 SC 511, 104 SE 182. Spivey v Fidelity & Deposit Co. (1931) 162 SC 143, 160 SE 275.

Quoted in Treasurer v Buckner (1842) 27 SCL 323. Posey v Ramey (1849) 35 SCL 20. Re Wells (1934) 174 SC 403, 177 SE 665. Parker v Brown (1940) 195 SC 35, 10 SE2d 625.

Nature of bond. In the form prescribed in this section [Code 1962 Section 50‑55] are the following words, “to the payment of which, well and truly to be made, we bind ourselves and each and every of us.” Where a bond conforms to the form prescribed, it is a joint and several bond, and an action thereon is a joint and several action as to the parties thereto bound. Cohen v. Maryland Cas. Co. of Baltimore, Md. (D.C.S.C. 1925) 4 F.2d 564.

Bond form refers to term of appointment. The form of the bond provided for in this section [Code 1962 Section 50‑55], fixing the responsibility of the bondsman during the whole period a treasurer may continue in office, has reference to the definite term to which he has been appointed. State v. Mason (S.C. 1923) 126 S.C. 426, 120 S.E. 367.

For additional related case, see Commissioners of Treasury v. McKie (S.C. 1819).

**SECTION 8‑3‑40.** Secretary of State to supply blank forms of bonds.

 The Secretary of State shall ascertain the number of officers in this State for whom bonds are required and cause an equal number of such bonds to be printed annually at the expense of the State. Such forms shall include space for the proper officers to approve securities and for probate. The Secretary of State shall distribute to each county, annually, the number of such bonds equal to the number of officers for whom bonds are required in that county.

HISTORY: 1962 Code Section 50‑56; 1952 Code Section 50‑56; 1942 Code Section 3046; 1932 Code Section 3046; Civ. C. ‘22 Section 737; Civ. C. ‘12 Section 655; Civ. C. ‘02 Section 587; G. S. 444; R. S. 505; 1829 (6) 384; 1982 Act No. 329.

**SECTION 8‑3‑50.** Clerks shall receive blank forms and give to officers.

 Each county clerk shall receive the bonds for his county and deliver one to each person elected or appointed to any such office, whenever called for.

HISTORY: 1962 Code Section 50‑57; 1952 Code Section 50‑57; 1942 Code Section 3047; 1932 Code Section 3047; Civ. C. ‘22 Section 738; Civ. C. ‘12 Section 656; Civ. C. ‘02 Section 588; G. S. 445; R. S. 506.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 24, Bond.

**SECTION 8‑3‑60.** Assumption of office before giving bond.

 It shall be unlawful for any person to assume or attempt to assume the duties of any office for which a bond is required, without having given the bond required. Any person assuming or attempting to assume the duties of any office as aforesaid shall be guilty of a misdemeanor and shall be subject to a fine of five hundred dollars or imprisonment for not less than three months, in the discretion of the court.

HISTORY: 1962 Code Section 50‑58; 1952 Code Section 50‑58; 1942 Code Section 1513; 1932 Code Section 1513; Cr. C. ‘22 Section 461; Cr. C. ‘12 Section 536; Cr. C. ‘02 Section 379; 1901 (23) 750.

LIBRARY REFERENCES

67 C.J.S., Officers Section 47.

Attorney General’s Opinions

Neither South Carolina Department of Social Services or South Carolina Board of Social Services has express or implied authority to purchase indemnity bonds. 1984 Op Atty Gen, No. 84‑65, p. 164.

NOTES OF DECISIONS

In general 1

1. In general

Cited in State v Messervy (1910) 86 SC 503, 68 SE 766. State v McMillan (1939) 189 SC 444, 1 SE2d 626.

**SECTION 8‑3‑70.** Public officer shall not draw salary until bond given.

 No executive, judicial or other officer, elected or appointed to any office in the State, shall be entitled to receive any pay or emoluments of office until he shall have been duly commissioned and qualified and shall have given bond when so required to do by law.

HISTORY: 1962 Code Section 50‑59; 1952 Code Section 50‑59; 1942 Code Section 3077; 1932 Code Section 3077; Civ. C. ‘22 Section 764; Civ. C. ‘12 Section 680; Civ. C. ‘02 Section 610; G. S. 582; R. S. 529; 1901 (23) 750.

LIBRARY REFERENCES

67 C.J.S., Officers Section 219.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Verner v. Seibels (S.C. 1901) 60 S.C. 572, 39 S.E. 274.

Cited in Macoy v. Curtis (S.C. 1880) 14 S.C. 367.

**SECTION 8‑3‑80.** Certain county officials shall be required to give corporate surety.

 Before any county official, other than a magistrate, constable or rural county policeman, who is required by law to give bond shall enter into the discharge of the duties of his office he shall secure bond in some reliable surety company authorized to do business in this State, except that if any official be refused bond by any of such surety companies, after proper application, a personal bond shall be accepted when approved as provided by law.

HISTORY: 1962 Code Section 50‑60; 1952 Code Section 50‑60; 1942 Code Section 3058; 1932 Code Section 3058; Civ. C. ‘22 Section 749; Civ. C. ‘12 Section 667; Civ. C. ‘02 Section 599; R. S. 517; 1892 (21) 76; 1894 (21) 757; 1896 (22) 28; 1912 (27) 703.

LIBRARY REFERENCES

67 C.J.S., Officers Sections 282‑284.

67 C.J.S., Officers Sections 282‑308.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 24, Bond.

NOTES OF DECISIONS

In general 1

1. In general

Section is general law. Statute requiring bonds of certain officials of Pickens County to be executed by surety company was held unconstitutional as a special law, since this section [Code 1962 Section 50‑60] is a general law and could be made applicable. Gillespie v. Blackwell (S.C. 1931) 164 S.C. 115, 161 S.E. 869. Counties 64; Public Employment 133; Statutes 1683

Cited in Massachusetts Bonding & Ins. Co. v. Law (S.C. 1929) 149 S.C. 402, 147 S.E. 444.

**SECTION 8‑3‑90.** Surety company bonds authorized generally.

 Solvent guaranty companies, surety companies, fidelity insurance companies and fidelity and deposit companies incorporated and organized under the laws of this State or any other state of the United States or foreign governments for the purpose of transacting the business of fidelity insurance which have a paid‑up capital or surplus of two hundred fifty thousand dollars and which shall have complied with all the requirements of law as to a license required by this State may, upon proper proof thereof and upon production of evidence of solvency, be accepted upon the bonds of all city, county and State officers of this State. The various officers of this State whose duty it is to approve the sureties upon such bonds may accept such a company as one of the sureties or the only surety upon such bond as the solvency of such company may warrant. But no person having the approval of any bond shall exact that it be furnished by a guaranty company or by any particular guaranty company. Any such bond shall be made payable to the State.

HISTORY: 1962 Code Section 50‑61; 1952 Code Section 50‑61; 1942 Code Section 3058; 1932 Code Section 3058; Civ. C. ‘22 Section 749; Civ. C. ‘12 Section 667; Civ. C. ‘02 Section 599; R. S. 517; 1892 (21) 76; 1894 (21) 757; 1896 (22) 28; 1912 (27) 703; 1947 (45) 322.

**SECTION 8‑3‑100.** Cost of bonds from corporate surety.

 When the official of any county secures bond from a surety company the cost of such bond shall be paid by the governing body of the county out of the ordinary county funds.

HISTORY: 1962 Code Section 50‑63; 1952 Code Section 50‑63; 1942 Code Section 3058; 1932 Code Section 3058; Civ. C. ‘22 Section 749; Civ. C. ‘12 Section 667; Civ. C. ‘02 Section 599; R. S. 517; 1892 (21) 76; 1894 (21) 757; 1896 (22) 28; 1912 (27) 703.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Spivey v. Fidelity & Deposit Co. of Maryland (S.C. 1931) 162 S.C. 143, 160 S.E. 275.

**SECTION 8‑3‑110.** Distribution of liability among sureties.

 Each surety on a personal official bond may state in writing the amount of the liability assumed by him, beyond which amount he shall not be held. The aggregate of the amounts assumed by all the sureties shall not be less than the penalty of the bond. In case of loss or default, the sureties will be entitled, as between each other, to contribution in the proportion of their liability.

HISTORY: 1962 Code Section 50‑65; 1952 Code Section 50‑65; 1942 Code Section 3048; 1932 Code Section 3048; Civ. C. ‘22 Section 739; Civ. C. ‘12 Section 657; Civ. C. ‘02 Section 589; G. S. 452; R. S. 507; 1866 (13) 469; 1868 (14) 19.

**SECTION 8‑3‑120.** Residence of sureties for county officers.

 The sureties, other than corporate sureties, on bonds of all county officers must be citizens of the county in which their principal resides.

HISTORY: 1962 Code Section 50‑66; 1952 Code Section 50‑66; 1942 Code Section 3048; 1932 Code Section 3048; Civ. C. ‘22 Section 739; Civ. C. ‘12 Section 657; Civ. C. ‘02 Section 589; G. S. 452; R. S. 507; 1866 (13) 469; 1868 (14) 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 24, Bond.

**SECTION 8‑3‑130.** Examination and approval of bonds.

 The official bond of each officer of the executive department must be submitted to the Governor for his approval. The official bonds of all county officers must be examined and approved or disapproved by the governing body of the county, except the bonds of the members of such governing body which must be examined and approved or disapproved by the clerk of court or the Attorney General. In all cases in which the governing body of the county refuses to approve the bond of any county officer, such officer may refer the bond to the Attorney General and, if approved by him, after hearing evidence, the bond shall be accepted by the governing body of the county.

HISTORY: 1962 Code Section 50‑67; 1952 Code Section 50‑67; 1942 Code Section 3049; 1932 Code Section 3049; Civ. C. ‘22 Section 740; Civ. C. ‘12 Section 658; Civ. C. ‘02 Section 590; G. S. 453, 466, 611; R. S. 508; 1868 (14) 70; 1872 (15) 106; 1875 (15) 986; 1893 (21) 481.

LIBRARY REFERENCES

67 C.J.S., Officers Sections 47, 282, 283.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney General Section 15, Miscellaneous.

S.C. Jur. Clerks of Court Section 5, Qualification‑ Performance Bond.

S.C. Jur. Public Officers and Public Employees Section 24, Bond.

NOTES OF DECISIONS

In general 1

1. In general

Remedy of section is exclusive. Such remedy as is provided for by this section [Code 1962 Section 50‑67] and following sections is exclusive. An order of the court of general sessions requiring a master to give a new bond, and providing that on the failure to do so, a notice shall be given him to show cause why his office should not be declared vacant, is invalid. Ex parte Charles (S.C. 1897) 48 S.C. 279, 26 S.E. 605.

Cited in State v. Yates (S.C. 1837).

**SECTION 8‑3‑140.** Approval by Attorney General of form and execution of bonds of officers of State; recordation.

 The bonds of all public officers of the State shall, before they are accepted or recorded, be examined by the Attorney General or by one of the solicitors, who must certify in writing upon the bond that he approves the form and execution thereof. When so examined, approved and certified the bonds of State, district or circuit officers shall be filed with the Secretary of State and shall be recorded by him, without charge, in suitable books kept by him for the purpose and when so recorded shall be filed with the State Treasurer except that the bond of the State Treasurer shall be filed with the Governor.

HISTORY: 1962 Code Section 50‑68; 1952 Code Section 50‑68; 1942 Code Section 3050; 1932 Code Section 3050; Civ. C. ‘22 Section 741; Civ. C. ‘12 Section 659; Civ. C. ‘02 Section 591; G. S. 446; R. S. 509; 1877 (16) 301; 1901 (23) 750.

LIBRARY REFERENCES

67 C.J.S., Officers Section 47.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney General Section 15, Miscellaneous.

S.C. Jur. Clerks of Court Section 5, Qualification‑ Performance Bond.

S.C. Jur. Public Officers and Public Employees Section 24, Bond.

**SECTION 8‑3‑150.** Recordation and filing of bonds of county officers.

 Every county officer who is required to give bond for the faithful performance of the duties of his office shall, within thirty days after notification of his election or appointment, have his bond recorded in the office of the register of deeds or, if there be no such officer, in the office of the clerk of the circuit court for the county in which such officer resides and the register or clerk shall keep a separate book, properly indexed, for the purpose of recording such bonds, which shall be provided by the governing body of the county. The register or clerk shall be entitled to exact a fee from the public officer of one dollar for recording his bond. But no such bond shall be recorded until first approved as to surety by the proper officials as prescribed by law and as to execution and form by the Attorney General or such other official as may be designated for this purpose. Such bonds when recorded shall be immediately transmitted to the Secretary of State who, after recording them as required by Section 8‑3‑140, shall file them with the State Treasurer.

HISTORY: 1962 Code Section 50‑69; 1952 Code Section 50‑69; 1942 Code Section 3051; 1932 Code Section 3051; Civ. C. ‘22 Section 742; Civ. C. ‘12 Section 660; Civ. C. ‘02 Section 592; G. S. 449; R. S. 510; 1866 (13) 382; 1901 (23) 749; 1920 (31) 785; 1997 Act No. 34, Section 1, eff January 1, 1998.

Code Commissioner’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

LIBRARY REFERENCES

67 C.J.S., Officers Section 47.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 5, Qualification‑ Performance Bond.

**SECTION 8‑3‑160.** Governing body of county to examine sufficiency of county officers’ bonds and correct deficiencies.

 The governing body of each county in the State shall make an annual examination into the sufficiency of all the county officers’ bonds within their respective counties and take action to correct any deficiencies with regard to any bond which, in its judgment, may be insufficient.

HISTORY: 1962 Code Section 50‑70; 1952 Code Section 50‑70; 1942 Code Section 3053; 1932 Code Section 3053; Civ. C. ‘22 Section 744; Civ. C. ‘12 Section 662; Civ. C. ‘02 Section 594; R. S. 512; 1876 (16) 699; 1982 Act No. 326.

**SECTION 8‑3‑180.** Procedure when bond becomes unsatisfactory.

 If any surety on any such official bond should die or depart permanently from the State or if such board or the Governor, respectively, should, at the time of the annual examination or at any other time, be of opinion that any of the sureties is not worth as much clear of debt as his proportion of the obligation to which his name is affixed, the board or the Governor, as the case may be, shall cause the public officer whose surety has departed this life or removed from the State or is objected to for insufficiency of estate to be notified of such exception. Any such officer shall, within thirty days after the service of such notification, procure other surety satisfactory to the board or the Governor, as the case may be, but so as not to cancel or at all impair the original bond or produce satisfactory evidence to the board or the Governor, as the case may be, that the surety objected to as owning insufficient property, as aforesaid, is worth as much as his proportion of the obligation, clear of debt; or else the officer shall procure such additional and sufficient surety or sureties as the board or the Governor, respectively, shall approve. And in default of compliance with either of such requirements within thirty days the office of the defaulting officer shall be regarded as vacant.

HISTORY: 1962 Code Section 50‑72; 1952 Code Section 50‑72; 1942 Code Section 3052; 1932 Code Section 3052; Civ. C. ‘22 Section 743; Civ. C. ‘12 Section 661; Civ. C. ‘02 Section 593; G. S. 447; R. S. 511; 1820 (6) 147; 1886 (19) 381.

LIBRARY REFERENCES

67 C.J.S., Officers Sections 47, 294.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 24, Bond.

**SECTION 8‑3‑190.** Execution of new bond when surety demands relief; release of prior sureties.

 When any of the sureties of any officer elected or appointed to any office shall, in writing, notify the proper officer whose duty it is to approve the bond of such officer that they desire to be relieved from their suretyship, the officer authorized by law to approve such bond shall require the officer to execute a new bond with surety, which, when approved, shall be as valid as the bond given on the original election of appointment of such officer. And the sureties upon the prior bond shall be released from responsibility for all acts or defaults of such officer which may be done or committed subsequent to the approval of such new bond.

HISTORY: 1962 Code Section 50‑73; 1952 Code Section 50‑73; 1942 Code Section 3056; 1932 Code Section 3056; Civ. C. ‘22 Section 747; Civ. C. ‘12 Section 665; Civ. C. ‘02 Section 597; R. S. 515; 1887 (19) 783.

LIBRARY REFERENCES

67 C.J.S., Officers Section 294.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 24, Bond.

NOTES OF DECISIONS

In general 1

1. In general

But breach permits release of surety company. Surety company executing official bond of county sheriff for consideration could, on sheriff’s breach of bond, seek release from future liability. Spivey v. Fidelity & Deposit Co. of Maryland (S.C. 1931) 162 S.C. 143, 160 S.E. 275. Public Employment 1022; Sheriffs And Constables 156

If notice accompanied by proper grounds. Surety company, desiring to obtain release from future liability on county sheriff’s bond, should present to county commissioners with demand for such release the grounds therefor. The county commissioners should then investigate the charges and give the sheriff opportunity to answer them. Spivey v. Fidelity & Deposit Co. of Maryland (S.C. 1931) 162 S.C. 143, 160 S.E. 275. Public Employment 1022; Sheriffs And Constables 156

Only accommodation surety may withdraw without reason. A foreign surety company executing an official bond of county treasurer in consideration of annual payments of premiums by the county is without right, under this section [Code 1962 Section 50‑73], to withdraw therefrom without reason, in that this section [Code 1962 Section 50‑73] pertains only to accommodation surety, rather than surety for compensation. Massachusetts Bonding & Ins. Co. v. Law (S.C. 1929) 149 S.C. 402, 147 S.E. 444.

Notice must be given before release is effective. Where the defendant surety on a county dispenser’s bond failed to give notice, as required by this section [Code 1962 Section 50‑73] providing for the withdrawal of sureties from official bonds, he was not released from liability, and the principal could not recover for the wrongful act of surety in cancelling the bond and thus causing his discharge. Bolen v. National Surety Co. (S.C. 1918) 108 S.C. 403, 94 S.E. 1049.

**SECTION 8‑3‑200.** Effect of failure to submit satisfactory new bond.

 When any officer shall be required to execute a new bond, with surety, as provided for in Section 8‑3‑190, he shall proceed forthwith to execute such new bond and submit it for approval to the officer authorized by law to approve it. If he shall fail or neglect to so execute and submit such new bond or fail or neglect to execute and submit a bond satisfactory to the officer authorized to approve such bond within thirty days after having been required so to do, the officer authorized to approve such new bond shall forthwith report to the Governor that such officer has been duly required under the provisions of Section 8‑3‑190 to furnish a new bond and that such officer has failed so to do. Upon being so informed and upon receiving a certified copy of all the papers relative to the case, the Governor, by public proclamation shall forthwith declare the office held by such defaulting officer vacant and such office so made vacant shall be filled in the manner now provided by law.

HISTORY: 1962 Code Section 50‑74; 1952 Code Section 50‑74; 1942 Code Section 3057; 1932 Code Section 3057; Civ. C. ‘22 Section 748; Civ. C. ‘12 Section 666; Civ. C. ‘02 Section 598; R. S. 516; 1887 (19) 783.

LIBRARY REFERENCES

67 C.J.S., Officers Section 47.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 24, Bond.

NOTES OF DECISIONS

In general 1

1. In general

Commissioned officer has prima facie title to office. Governor’s commission of appointee gives him prima facie title to sheriff’s office, which would ordinarily be sufficient to warrant issuance of mandamus requiring adversary to surrender office to appointee. Spivey v. Fidelity & Deposit Co. of Maryland (S.C. 1931) 162 S.C. 143, 160 S.E. 275. Mandamus 77(3)

Breach of bond vacating sheriff’s office. Facts before Governor regarding breach of bond by county sheriff who declined to give new bond held sufficient to justify him in declaring office of sheriff vacant. Spivey v. Fidelity & Deposit Co. of Maryland (S.C. 1931) 162 S.C. 143, 160 S.E. 275. Public Employment 177(2); Sheriffs And Constables 5

This remedy is exclusive. Ex parte Charles (S.C. 1897) 48 S.C. 279, 26 S.E. 605.

**SECTION 8‑3‑210.** State officers and employees shall advise interested persons as to bonds and furnish copies thereof.

 Any officer, agent, servant or employee in any office of the State or any of its boards, bureaus, departments, commissions or other instrumentalities, upon request therefor by any interested person, shall supply such person with information as to whether any person employed in any office, board, bureau, department, commission, agency or other instrumentality of the State is bonded for any purpose and, if so, furnish such interested person with a copy of such bond.

HISTORY: 1962 Code Section 50‑75; 1952 Code Section 50‑75; 1942 Code Section 3061; 1939 (41) 335.

**SECTION 8‑3‑220.** Bonds of public officers may be sued on.

 The bond of any public officer in this State may at all times be sued on by the public, any corporation or private person aggrieved by any misconduct of any such public officer.

HISTORY: 1962 Code Section 50‑76; 1952 Code Section 50‑76; 1942 Code Section 3054; 1932 Code Section 3054; Civ. C. ‘22 Section 745; Civ. C. ‘12 Section 663; Civ. C. ‘02 Section 595; G. S. 450; R. S. 513; 1901 (23) 750.

LIBRARY REFERENCES

67 C.J.S., Officers Sections 297‑308.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 24, Bond.

NOTES OF DECISIONS

In general 1

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1. In general

Cited in State v Bowen (1919) 112 SC 165, 98 SE 864. Fleming v McLure (1933) 171 SC 147, 171 SE 804. Rogers v U. S. Fidelity & Guaranty Co. (1954) 225 SC 298, 81 SE2d 896. McKenzie v Florence (1959) 234 SC 428, 108 SE2d 825 (ovrld on other grounds McCall v Batson (SC) 329 SE2d 741).

Action on bond is action on contract. The bond of a public officer is a contract, and an action upon the bond alone is an action upon a contract. Being an action upon a contract, it is then, for the purpose of determining jurisdiction of the courts, a transitory action as contradistinguished from a local action. Chappell v. Fidelity & Deposit Co. of Maryland (S.C. 1940) 194 S.C. 124, 9 S.E.2d 592.

And may be brought by State. The State may bring an action for breach of a bond of a county officer, notwithstanding a statute making it the duty of the solicitor to bring an action on the bond of a county officer in the name of the county, which must be construed as directory as to the party plaintiff. State v. Fidelity & Deposit Co. of Maryland (S.C. 1920) 114 S.C. 511, 104 S.E. 182. Counties 101(5); Public Employment 1035

Construction of terms of bond. When a suit is brought upon a bond against the constable and his sureties, the extent of the liability is to be ascertained from the terms of the bond, strictly construed so as not to extend the liability of a surety by implication beyond its terms, but also reasonably construed, so as not to defeat the purpose of requiring sureties for the protection of the public against official misconduct. Wieters v. May (S.C. 1905) 71 S.C. 9, 50 S.E. 547.

Scope of bond’s protection. The protection afforded by a bond applies only to those acts done in officer’s official capacity or in performing some official duty imposed by law. Wieters v. May (S.C. 1905) 71 S.C. 9, 50 S.E. 547.

Statute of limitations begins at end of term. The statute of limitations for action for a clerk’s breach begins to run, as to the sureties, at the expiration of the clerk’s term. State v. Lake (S.C. 1888) 30 S.C. 43, 8 S.E. 322.

2. Meaning of “aggrieved”; who is “aggrieved party”

Meaning of “aggrieved.” ‑ The term “aggrieved” in this section [Code 1962 Section 50‑76] means “injured in a legal sense,” and a “person aggrieved” within the meaning of this section [Code 1962 Section 50‑76] is “one injured in a legal sense.” Parker v. Brown (S.C. 1940) 195 S.C. 35, 10 S.E.2d 625. Public Employment 1030

County tax collector as aggrieved party. A county tax collector is not an aggrieved party, within the meaning of this section [Code 1962 Section 50‑76], when alleging that he was prevented from earning his fees and commission by failure of the county treasurer to issue tax executions for delinquent taxes. Parker v. Brown (S.C. 1940) 195 S.C. 35, 10 S.E.2d 625.

3. Liability on bond in particular cases

Or default occurring in another office. The surety on the bond of the county road supervisor, who had formerly been the county supervisor, is not liable for funds which came into the officer’s hands as county supervisor since the offices were distinct, and funds held by the county supervisor are not presumed to have been transferred to the county road supervisor. State v. Fidelity & Deposit Co. of Maryland (S.C. 1920) 114 S.C. 511, 104 S.E. 182.

Failure of officer to obey statute. The failure of an officer to obey the positive mandate of a statute is a breach of his bond upon which suit may be had under the authority of this section [Code 1962 Section 50‑76]. Richland County v. Owens (S.C. 1912) 92 S.C. 329, 75 S.E. 549. Public Employment 1023

Abuse of authority by officer. If a State constable, while attempting to execute some duty under a dispensary law, abuses or exceeds his authority or executes it in an unlawful manner to the injury of another, his official bond is liable. Wieters v. May (S.C. 1905) 71 S.C. 9, 50 S.E. 547.

Bond does not cover private acts. The bond cannot cover any act or omission of a constable done without any authority whatever, in his private or personal capacity as a man or citizen. Wieters v. May (S.C. 1905) 71 S.C. 9, 50 S.E. 547.

Neglect of duty by clerk. Where a clerk, to whom a decree, rendered, has been given to be disposed of according to law, marks it “filed,” but neglects to enroll, enter or index it, putting it in a drawer where it is found five years later, the sureties on his bond are liable to the plaintiff in the decree, where several judgments in the meantime are entered up against the execution debtor, and mortgages are executed by him which cover his entire property. Strain v. Babb (S.C. 1889) 30 S.C. 342, 9 S.E. 271, 14 Am.St.Rep. 905. Clerks Of Courts 74

Unless demand is made after order requiring payment during term of office. State v. Lake (S.C. 1888) 30 S.C. 43, 8 S.E. 322.

Or clerk failing to pay over money received. The conditions of a clerk’s official bond insuring the performance of duties of his office during the whole period that he may continue therein is not violated by his failure to pay over money received by him in a cause pending in his court. State v. Lake (S.C. 1888) 30 S.C. 43, 8 S.E. 322. Clerks Of Courts 74

**SECTION 8‑3‑230.** Certified copies of bonds shall be delivered to parties to suit on request.

 For the purpose of any suit brought under Section 8‑3‑220 the officer or officers, for the time being, with whom such bond may be filed or recorded, upon application at his or their office, shall deliver to any person applying therefor and paying the fees for doing so an exact and certified copy of the bond of such public officer there deposited or recorded.

HISTORY: 1962 Code Section 50‑77; 1952 Code Section 50‑77; 1942 Code Section 3054; 1932 Code Section 3054; Civ. C. ‘22 Section 745; Civ. C. ‘12 Section 663; Civ. C. ‘02 Section 595; G. S. 450; R. S. 513; 1901 (23) 750.

LIBRARY REFERENCES

67 C.J.S., Officers Section 307.

NOTES OF DECISIONS

In general 1

1. In general

Application for copy of bond. All the aggrieved person has to do is to apply for a certified copy of the bond to which he is entitled by right. Hagood v. Blythe, 1889, 37 F. 249.

**SECTION 8‑3‑240.** Distribution of moneys recovered on bond after defalcation.

 Whenever any officer of this State charged with the care, collection or disbursement of public funds is required to give bond to the State and a recovery is had upon such bond or any moneys are seized, levied upon or attached in his hands or turned over or surrendered by such officer to the State Treasurer upon his commitment to jail, under warrant from the State Treasurer, the moneys so recovered, seized, levied upon, attached, surrendered or turned over shall be distributed between the State, county, school or other specific funds, in proportion to the several amounts due by the officer to the State, county, school or other specific funds, at the time of such recovery, seizure, attachment, levy or surrender. The provision of this section shall only apply to suits, seizures, attachments or levies by or surrenders to public officers and not to suits upon the bonds of such officers brought by private individuals.

HISTORY: 1962 Code Section 50‑78; 1952 Code Section 50‑78; 1942 Code Section 3055; 1932 Code Section 3055; Civ. C. ‘22 Section 746; Civ. C. ‘12 Section 664; Civ. C. ‘02 Section 596; G. S. 451; R. S. 514.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 24, Bond.

**SECTION 8‑3‑250.** State officers shall not be officers of surety companies.

 No State officer shall be an officer of any company issuing bonds for any of the county or State officers.

HISTORY: 1962 Code Section 50‑79; 1952 Code Section 50‑79; 1942 Code Section 3058; 1932 Code Section 3058; Civ. C. ‘22 Section 749; Civ. C. ‘12 Section 667; Civ. C. ‘02 Section 599; R. S. 517; 1892 (21) 76; 1894 (21) 757; 1896 (22) 28; 1912 (27) 703.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 24, Bond.