

Bonds? What Bonds?

The requirement that elected county officials post a “Bond” is statutorily required.

“Every county official before he or she enters upon the duties of his or her office shall furnish a bond conditioned that he or she will faithfully perform the duties of his or her office and account for and pay over all money which may come into his or her hands by virtue of his or her office, and that he or she, or his or her executors or administrators, will deliver to his or her successor safe and undefaced all books, records, papers, seals, equipment, and furniture belonging to his or her office.”

- 1) The amount of the Bond that is required depends on the office to which you are elected and the population of your county. (RCW 36.16.050)
- 2) However because some offices perform roles that may require additional bonds.
 - i) Auditor “Every county auditor shall, before entering upon his or her duties as registrar of titles, give a bond with sufficient sureties, to be approved by a judge of the superior court of the state of Washington in and for his or her county, payable to the state of Washington, in such sum as shall be fixed by the said judge of the superior court...said bond shall be filed in the office of the secretary of state, and a copy thereof shall be filed and entered upon the records of the superior court in the county wherein the county auditor shall hold office”. (RCW 65.12.055)
 - ii) Clerk. When the judge or judges of any court, or a majority of them, believe that the clerk of the court does not have a good and sufficient bond on file, or that the bond is not large enough in amount, such judge or judges shall enter an order requiring him or her, within such time as may be specified in the order, to execute and present to them a good and sufficient bond, in such sum as may be fixed by the order. In case of his or her failure to file the bond within ten days from the expiration of the date fixed the judge or judges shall declare the office vacant. (RCW 36.23.020) (see, Briefing in Riddle v. Judges for Yakima County Superior Court, Supreme Court number:95959-5)
 - iii) Sheriff. Whenever the company acting as surety on the official bond of a sheriff is disqualified, insolvent, or the penalty of the bond becomes insufficient on account of recovery had thereon, or otherwise, the sheriff shall submit a new or additional bond for approval to the board of county commissioners, if in session, or, if not in session, for the approval of the chair of such board, and file the same, when approved, in the office of the county clerk of his or her

county, and such new or additional bond shall be in a penal sum sufficient in amount to equal the sum specified in the original bond when added to the penalty of any existing bond, so that under one or more bonds there shall always be an enforceable obligation of the surety on the official bond or bonds of the sheriff in a penal sum of not less than the amount of the bond as originally approved.

Who Pays For The Bond?

The premium for bonds given by such surety insurers for appointive or elective public officers and for such of their deputies or employees as are required to give bond shall be paid by the state, political subdivision, or public body so served. (RCW 48.28.040)

To Whom are Bonds Payable?

The official bond of a public officer, to the state, or to any county, city, town or other municipal or public corporation of like character therein, shall be deemed a security to the state, or to such county, city, town or other municipal or public corporation, as the case may be, and also to all persons severally, for the official delinquencies against which it is intended to provide. (RCW 42.08.010)

Who Can Bring an Action Against the Bond?

When a public officer by official misconduct or neglect of duty, shall forfeit his or her official bond or render his or her sureties therein liable upon such bond, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action at law thereon in his or her own name against the officer and his or her sureties to recover the amount to which he or she may by reason thereof be entitled. (RCW 42.08.020)

- 1) Action can be brought against county auditor and their bond for negligence in failing to properly index a mortgage. (Inashima v. Wardall, 128 Wash. 617)
- 2) Action on official bond may be maintained against official and sureties without first obtaining judgment against principal.
- 3) County treasurer and bondsmen may be liable for loss of public moneys through failure of bank. Kittitas County v. Travers, 16 Wash. 528 (1897)

For What Actions Can a Claim Against the Bond Be Made?

Every official bond executed by any officer pursuant to law, shall be in force and obligatory upon the principal and sureties therein, to and for the state of Washington, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer, in his official capacity, and any person so injured or aggrieved may bring suit on such bond in his or her own name without an assignment thereof. (RCW 42.08.080)

- 1) Sureties on sheriff's bond assume responsibility for all sheriff's official acts. Sabin v. Barnett, 79 F. 947, (1897)
- 2) Sureties are not liable for acts of officer performed outside of official duties. Greenius v. American Surety Co., (1916)
- 3) Surety on bond of chief of police is not liable for improper arrest by subordinate officer. Pavish v. Meyers, 129 Wash. 605 (1924)
- 4) Bondsman liable for conversion of public funds by auditor, when conversion is result of an official act which could not have been accomplished by private citizen. Skagit County v. American Bonding Co., 59 Wash. 1 (1910)
- 5) County treasurer and bondsmen may be liable for loss of public moneys through failure of bank. Kittitas County v. Travers, 16 Wash. 528 (1897)

Leave of Court May be Required Before Proceeding Against the Bond

Before an action can be commenced by a plaintiff, other than the state, or the municipal or public corporation named in the bond, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certified copy of the bond and an affidavit of the plaintiff, or some person in his or her behalf, showing the delinquency. But if the matter set forth in his or her affidavit be such that, if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that the leave herein provided for has been granted, the defendant, on motion, shall be entitled to judgment of nonsuit; if it does, the defendant may controvert the allegation, and if the issue be found in his or her favor, judgment shall be given accordingly. (RCW 42.08.030)

Amount Recoverable Against the Bond

The surety is liable for only the face value of the bond, or a portion of it that is not otherwise encumbered. (RCW 42.08.050)

Bond Approval and Filing

The official bonds of all county and township officers, except the county superintendent of schools, shall be approved by the board of county commissioners, if in session, and if not in session, by the chair of such board, and filed and recorded in the office of the county clerk of their respective counties: PROVIDED, That the bond of the county clerk shall be recorded in the office of the county auditor and filed in the office of the county treasurer. (RCW 42.08.100)

County Officials Have the Responsibility to maintain a Bond that Meets the Statutory Minimum Amount

Whenever the sureties, or any one of them, in the official bond of any county or township officer shall die, remove from the state, become insolvent or insufficient, or the penalty of such bond shall become insufficient, on account of recoveries had thereon, or otherwise, it shall be the duty of the board of county commissioners of the proper county, of their own motion, or on the showing of any person, supported by affidavit, to summon any such officer to appear before them at a stated time, not less than five days after service of such summons, and show cause why he or she should not execute an additional official bond with good and sufficient sureties. (RCW 42.08.110).

If A County Official Fails to Appear Before the County Commissioners or Fail To Secure an Additional Bond, Their Office May Be Declared Vacant

Should such officer, after due notice, fail to appear at the time appointed, the matter may be heard and determined in his or her absence; if after examination the board of county commissioners shall be of opinion that the bond of such officer has become insufficient from any cause whatever, they shall require an additional bond with such security as may be deemed necessary, which said additional bond shall be executed and filed within such time as the board of county commissioners may order; and if any such officer shall fail to execute and file such additional bond within the time prescribed by such order, his or her office shall become vacant. (RCW 42.08.120)

Can an Elected Official Be Required To Post An Additional Bond?

That question as it pertains to the County Clerk is currently before the Washington State Supreme Court. In *Riddle v. Eloffson*, case no. 959595, on May 4, 2018, the Yakima County Superior Court judges issued an order requiring the Clerk, Janet Riddle, to post an additional \$200,000 surety bond by June 6, 2018, or else they would declare her office vacant. Riddle brought an action in the State Supreme Court challenging the Superior Court Judges' authority to order the Clerk to post a bond exceeding that required by statute, and exceeding the maximum amount required by the County Treasurer (which is \$250,000 for a county the size of Yakima). That limit is set forth in RCW 36.16.050(3). The judges argue that their authority to set any limit with unfettered discretion is in RCW 36.23.020, which states:

“When the judge or judges of any court, or a majority of them, believe that the clerk of the court does not have a good and sufficient bond on file, or that the bond is not large enough in amount, such judge or judges shall enter an order requiring him or her, within such time as may be specified in the order, to execute and present to them a good and sufficient bond, in such sum as may be fixed by the order. In case of his or her failure to file the bond within ten days from the expiration of the date fixed the judge or judges shall declare the office vacant.”

So the real riddle in this case is, does the Judge's statute render the main statute meaningless? Argument was heard November 13, 2018. No decision has been rendered yet.

What about other elected officials? Can their bond limits be increased? There is no statutory authority to do so except that provided in RCW 36.16.050 for the specified officials. The Auditor might have to as a registrar of titles for the Torrens Act, but the question then becomes whether RCW 36.16.050(2) or RCW 65.12.055 controls.