

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF ADMINISTRATION

DI VISION OF RISK MANAGEMENT

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April 12, 2000

Wintertelecom
Mr. Ralph Winterrowd
6901 East Tudor #7
Anchorage, AK 99507

by FedX&
by fax 907-269-7090

RE: Public Employee Bonds - Inquiry

Dear Mr. Winterrowd:

This letter is written in response to your telephone request for information regarding AS 38.05040 and AS 39.15.010-030. Enclosed with this letter you will find a copy of our FY 2000 "Public Employee Dishonesty and Faithful Performance" policy form, per your request. I am sending to you the forms and endorsements that make up the combined coverages which may be of interest to you in answering your general question. The Public Employee coverage portion starts on page 7. You will probably note that the coverage applies to all employees of the state as well as others as endorsed. It is my understanding that state court officials, such as state judges, are included within the coverage.

I hope this information is of help to you. If you have any questions, please feel free to call me at (907) 465-5724 and I will do my best to answer them.

Finally, with respect to your general questions regarding the bonding statutes in AS 39.15, the following is a review of the statute history regarding the application of AS 39.15.010 - 100. This was prepared with the help and research of the Attorney Generals Office and should hopefully allay your concerns.

AS 39.15.010 - 100, was originally enacted by the 1943 Territorial Legislature [L 1943, ch 29, §1, p. 100]. Later codified as §1 1-2-1 and then AS 39.15.010, the statute read as follows:

Form, amount and conditions. The official bond of any officer, deputy, assistant, clerk or employee in any Territorial department, office or service from whom a bond is required under any statute of the Territory now or hereafter enacted, or any rule or regulation made under express or implied authority of law by any order or direction of the head of a Territorial department, office or service shall be in a form joint and several,

and made payable to the Territory of Alaska in such penal sum and with such conditions as may be required by law.

The subject of the statute is the bond. It applied to bonds of “any officer ... or employee **from whom** a bond is required under any statute of the Territory ...” (emphasis added). It is clear that it, and the other provisions of the same chapter, were intended to describe the content and process by which bonds “required under any statute of the Territory now or hereafter enacted, or any rule or regulation” should be approved, enforced, or rejected. The subject of the statute is the bond; it applies only to bonds from those employees from whom a bond is required under a statute or regulation; it does not require all employees to post bonds.

This statute, with other sections of the same chapter, was codified in the Alaska Compiled Laws Annotated of 1949 at §§1 1-2-1 to 11-2-10. Since all Territorial laws in force on the effective date of the state constitution, consistent with the constitution, continued in force until expired, repealed or amended, (ALASKA CONST. art. XV, § I.) this law remained in effect after statehood.

In 1959, in the first session of the Alaska Legislature following statehood, the Legislature undertook the organization of the executive and administrative functions of state government [State Organization Act of 1959, SESSION LAWS OF ALASKA 1959 ch 64 §§1-33]. As part of that organization, numerous territorial offices were abolished and their employees, powers, duties and obligations transferred to the State government. Included in the State Organization Act of 1959 at § 26 was this statute:

Surety Bonds. Heads of departments and subordinate officials shall furnish corporate surety bonds in such instances and in such amounts as required by law or otherwise determined by the Governor upon recommendation of the Commissioner of Administration. Such bonds shall be paid for by the State and shall be in such form as the Attorney General shall approve.

Also included was this statute at §30:

Repeal of Conflicting Laws. All laws and parts of laws in conflict herewith are repealed to the extent of such conflict.

Thus, to the extent that any part of §§1 1-2-1 to 100 could be read to conflict with the new statute, it was repealed.

In 1963, the legislature repealed all Territorial laws and adopted the “bulk formal revision of the laws of Alaska ... prepared under the direction of the Alaska Legislative Council.” AS 01.05.006. Included in the revision was the above §26, now AS 39.05.050, and former §§1 1-2-1 to 100, now AS 39.15.01 O-I 00.

Under authority granted by AS 01.05031, the Revisor substituted in the published text of AS 39.05050 the term “principal executive officer of each department” for “heads of departments” and applied uniform capitalization rules. However, the actual meaning is unchanged. In instances required by law, or otherwise by the Governor upon recommendation of the Commissioner of Administration, the “head” of a state department and other subordinate officials are required to post bonds. The State will pay for the bond. The principal executive officer of each department is therefore an “officer. . . from whom a bond is required under any statute of the Territory now or hereafter enacted” (ACLA 1949 §11-2-1).

The Revisor similarly revised and edited the language of AS 39.15.01 O-I 00 in subsequent compilations, making “necessary grammatical change in the manner generally followed in the Alaska Statutes” but “without changing the meaning of any law.” AS 01.05.031(b). Here is a table showing how the text of AS 39.15.010 was revised:

1943 text	current revised text
“any officer, deputy, assistant, clerk or employee in any Territorial department, office or service ”	“an officer or employee of the state”
“from whom a bond is required under any statute of the Territory now or hereafter enacted, or any rule or regulation made under express or implied authority of law by any order or direction of the head of a Territorial department, office or service”	“required by statute or regulation under authority of law”
“payable to the <i>Territory of Alaska</i> ”	“payable to the <i>state</i> ”
“in <i>such</i> penal sum and with <i>such</i> conditions”	“in <i>the</i> penal sum and with <i>the</i> conditions”

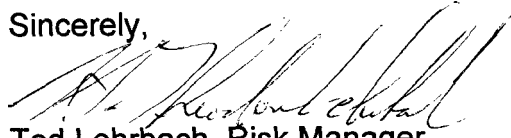
AS 39.15.010 was revised to simplify the text. The revised text is much simpler, but the meaning is in no way changed. Like the 1943 statute that preceded it, the current statute’s subject is the bond; it applies only to bonds from those employees from whom a bond is required under a statute or regulation; it is not a requirement for bonding but simply sets the form and content of the bond, and it does not require all employees to post bonds.

In essence, Chapter 15 (AS 39.05.01 O-I 00) sets procedural standards regarding a bond, but only if it is a required bond. A requirement for a bond is stated in the previous

Chapter 05 (AS 39.05.050). The latter section allows the State to pay for the bond and the Attorney General to approve the form of the bond.

Please be assured that bonds "required by statute or regulation" for state employees, officers, elected officials and boards and commission members are presently in place as they are being provided and paid for through this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Lehrbach", written over a horizontal line.

Ted Lehrbach, Risk Manager

In behalf of

J. Brad Thompson

Director

Enclosures