SURETY BONDS REQUIRED OF COUNTY AND CITY TREASURERS OF THE COMMONWEALTH OF VIRGINIA

REPORT OF THE AUDITING COMMITTEE OF THE GENERAL ASSEMBLY AND THE AUDITOR OF PUBLIC ACCOUNTS

SENATE DOCUMENT NO. 7 , 1960

Corrected Reprint

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1959

AUDITING COMMITTEE OF THE GENERAL ASSEMBLY

Thomas H. Blanton

Lloyd C. Bird

Frank P. Moncure

George E. Allen, Jr.

W. Roy Smith

AUDITOR OF PUBLIC ACCOUNTS

J. Gordon Bennett

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REPORT OF THE
AUDITING COMMITTEE OF THE GENERAL ASSEMBLY
AND THE
AUDITOR OF PUBLIC ACCOUNTS

November 10, 1959

To:

HIS EXCELLENCY J. LINDSAY ALMOND, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

Senate Joint Resolution Number 28 of February 20, 1958, directed the Auditing Committee of the General Assembly, in association with the Auditor of Public Accounts, to make a study of the maximum bond to be required of county and city treasurers for handling State revenues. The resolution is quoted herein below:

> "Whereas, the bond required of county and city treasurers for the faithful discharge of their official duties in connection with the State revenue is excessive in relation to the amount of such revenue such treasurers have under their control and supervision at any one time during the period of a year; now, therefore, be it
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> "Resolved by the Senate, the House of Delegates concurring, that the Auditing Committee of the General Assembly, in association with the Auditor of Public Accounts, is hereby directed to make a study and report upon the maximum bond which should be required of county and city treasurers for the faithful discharge of their duties in handling the State revenue. The Committee shall complete its study and make a report containing recommendations for any amendatory legislation to the Governor and General Assembly not later than November 1, 1959."

It will be observed that the resolution indicates that *specific* bonds are required of county and city treasurers for handling State revenue. While city treasurers have for decades been required to give separate bonds for State revenue handled by them, this has not been the case with county treasurers. The bonds required of county treasurers, at least since 1887, have been based upon revenue estimated to be received by these officers for their counties and the State. Separate bonds have not been required of county treasurers for State revenue handled by them.

In considering the matter of the maximum bonds to be required of these officers, we have deemed it appropriate to review the history of legislative action with respect to bonds required of them. All of our research shows that the General Assembly has been the policy-making body as to the amount of the bond to be required of a county treasurer in connection with the revenue to be handled by him for his county and the State, and as to the amount of the bond to be required of a city treasurer for revenue to be handled by him for the State.

So that we may present a clear and concise picture of legislative policy with respect to bonds required of each group of these officers, we shall present our findings first as to the law relating to bonds of county treasurers, and second, our findings as to the law relating to bonds of city treasurers. While on occasions a very few exceptions to the general law have been made as to bonds required for several of the county or city treasurers, we believe for purposes of our study that we should confine our considerations to general law requirements.

COUNTY TREASURERS

At least since 1887, treasurers of counties have been required to give one bond to cover both State and local revenues to be handled by them. Section 814 of the Code of 1887 required that, at the time a treasurer qualified for office, he should give such bond as the court should require, but not less than double the amount of the revenue to be received by him annually.

When the Code of 1919 was adopted the section fixing the bond to be required of the treasurer was changed to Section 2698. This section provided that the bond should be in such amount as determined by the court, but not less than seventy-five per centum of the amount to be received by him annually if a bond provided by a guaranty or security company doing business in the State of Virginia was given. If the treasurer was unable to procure this type of bond, he was required to give such bond as the court required, but not less than double the amount of revenue to be received by him annually.

The General Assembly in 1922 amended Section 2698 which, after amendment, required the treasurer to give as surety on his bond some guaranty or security company doing business in the State of Virginia. The penalty of the bond was to be such as the court might require but not less than fifty per centum of the amount to be received by him annually.

Section 2698 was amended again in 1930 and, after amendment, required the treasurer to give as surety on his bond some guaranty or security company doing business in the State of Virginia or such personal surety or security as might be deemed sufficient by the court. The penalty of the bond was fixed by the amended section at not less than thirty per centum of the revenue to be received by him annually.

The provisions of Section 2698 remained in effect until 1950 when the legislature amended Section 15-480 (the new number assigned to old Section 2698) to reduce the minimum requirement for a bond of the treasurer from thirty per centum to fifteen per centum of the revenue to be received annually by him.

It will be observed that, at least since 1887, the General Assembly has followed the policy of fixing only the minimum amount of bonds which county treasurers are required to give. It has not provided a maximum amount for such bonds, but has left the decision as to the maximum amount of a county treasurer's bond to the court before whom this officer is required to qualify. This policy gives the courts unrestricted authority to require bonds in excess of the statutory minimum if, in their judgment, circumstances and conditions warrant such action.

CITY TREASURERS

Historically, treasurers of cities have been required at the time they qualify, to give separate bonds to cover revenue to be handled by them for their cities in accordance with charter provisions and separate bonds to cover revenue to be handled by them for the Commonwealth. Our comments as to legal requirements for bonds required of these treasurers shall be confined, therefore, to bonds required of them for the handling of State revenue.

Section 815 of the Code of 1887 required that at the time a treasurer qualified for office, he should give such bond as the court should require, but not less than double the amount of revenue to be received annually by him for the Commonwealth.

When the Code of 1919 was adopted the section relating to a city treasurer's bond was changed to Section 2699. This section provided that the bond should be in an amount to be determined by the court, but not less than seventy-five per centum nor greater than the amount of revenue to be received annually by the treasurer for the Commonwealth if a bond provided by a guaranty or security company doing business in Virginia was given. If he was unable to procure such a bond, then the amount of the bond which was to be given was required to be double the amount of the revenue to be received annually by him for the Commonwealth.

In 1922 the legislature amended Section 2699. The section after amendment provided for a bond of not less than one-third, nor more than one-half, of the revenue to be received annually for the Commonwealth if the treasurer's surety was some security or guaranty company doing business in Virginia. If the officer was unable to give such security then the amount of his bond was required to be double the amount of revenues estimated to be received annually by him. The provisions of this section remained in effect until 1950, when the legislature amended Section 15-481 (the new number assigned to old Section 2699) to reduce the minimum requirement for a city treasurer's bond, guaranteed by some guaranty or security company doing business in Virginia, to fifteen per centum of the revenue to be received annually by him for the Commonwealth. The law now requires that the treasurer's bond may not be less than fifteen per centum nor more than one-half of the revenue to be received annually by him for the State if his surety is a guaranty or security company.

From this brief review, we find that the General Assembly, beginning in 1922, has provided *minimum* and *maximum* amounts for city treasurer's bonds in contrast to a *minimum* but no *maximum* for county treasurer's bonds.

SCOPE AND FINDINGS

On several occasions during the past decade, the Auditing Committee and the Auditor of Public Accounts have endeavored to ascertain if there were some formula or "yardstick" which could be used in arriving at the maximum bond which should be required not only for county and city treasurers but also for any public official or employee handling public funds. Inquiries on this question to specific surety companies, surety associations, other states, and national organizations of finance officers have produced negative results. During this study another effort was made but with the same results.

Our endeavors brought to light the fact that there were so many factors to consider, and that these factors varied so greatly as to persons, positions, organizations, and methods of operations, that, as yet, no sound or safe formula had evolved from consideration of the problem. In spite of the negative result of our efforts, we felt that an analysis of losses from accounts of officers, whose duties in other states were comparable to those of county and city treasurers in Virginia, would provide us with some information which, after evaluation, might aid us in making a recommendation as to maximum bonds for county and city treasurers.

The following questionnaire was sent to The Surety Association of America, with the request that the information—based on the experiences of the 83 surety companies who are members of the Association—be supplied for a three-year period for each of the several states.

STATISTICAL ANALYSIS OF LOSSES IN OFFICES OF COUNTY AND CITY TREASURERS PAID IN WHOLE OR IN PART BY SURETY COMPANIES

Three-Year Period Ended December 31, 1957

Name of State	Total No. of Claims	Total Amount of Losses	No. of Claims Involving Losses of Amounts								
			Under $ 5,000	$ 5,001 to $ 10,000	$ 10,001 to $ 20,000	$ 20,001 to $ 30,000	$ 30,001 to $ 50,000	$ 50,001 to $100,000	$100,001 to $200,000	$200,001 to $500,000	Over $500,000
Alabama											
Arizona											
Arkansas											
California											
Colorado											
Connecticut											
West Virginia											
Wisconsin											
Wyoming											

In reply to our letter accompanying the questionnaire, the general manager of the Association advised us that the information was not obtainable, that the compilation of the information would be a gigantic task, and that the preparation of such information by the member companies of his Association would—on the basis of a rough estimate—involve a cost to them well over $100,000. He also advised us that the Public Official Advisory Committee of his Association was undertaking a study to see if it were possible to produce a workable and satisfactory formula for the ascertainment of *minimum* amounts of coverage for public officials. In concluding his letter he stated—"We would never issue any recommendations as to a *maximum* amount of coverage because, if a loss in excess thereof should occur, we would probably be entirely discredited***. Incidentally, this is a very real danger which it seems to me should cause any man in public life to pause before recommending a *maximum* amount of coverage. Undoubtedly, you have heard of 'shock losses' in the public official field that would have been in excess of a so-called recommended maximum coverage in a given case."

On several occasions the Auditing Committee and the Auditor of Public Accounts have entered into negotiations with the Towner Rating Bureau and its successor, The Surety Association of America, for reductions in premiums on surety bonds of county treasurers. As a consequence of our negotiations, these agencies have, on behalf of their member companies, filed with and received approval of the State Corporation Commission for substantial rate reductions. The present rate schedule—which became effective on January 1, 1952—and which resulted in an annual saving of over $35,000 was filed following such negotiations. When this rate reduction was filed on February 9, 1951, The Surety Association of America advised the State Corporation Commission that "We are pleased to give this recognition by this substantial rate reduction to the effectiveness of the supervision by the office of State Auditor of Public Accounts and to the legislature of the Commonwealth of Virginia in approving accounting procedures and appropriating necessary funds to make them effective."

Set forth below is a tabulation which shows the extent to which premium rates on bonds of county treasurers have been decreased during the period from July 1, 1932 to December 31, 1959.

Bond			Rate for Each $1,000 of Bond Coverage				
			July 1, 1932	Aug. 23, 1937	Jan. 1, 1940	Jan. 1, 1952	Per Cent of Reduction 1932-1952
Up to	$ 25,000	@ Rate of	$15.00	$11.25	$7.50	$5.00	66-2/3
Next	25,000	@ Rate of	12.00	9.00	6.00	4.00	66-2/3
Next	50,000	@ Rate of	9.00	6.75	4.50	3.00	66-2/3
All over	100,000	@ Rate of	8.00	6.00	4.00	2.50	68-3/4

In order to make a comparison of present rates charged for these bonds in Virginia with those of similar officers in states contiguous to or in the general area of Virginia, we procured the premium rates for the bonds of comparable officers in effect in the States of Delaware, Maryland, Pennsylvania, North Carolina, South Carolina, Tennessee and West Virginia. The following tabulation presents this information in comparative form.

Amount of Bond		Rate for Each $1,000.00 of Bond Coverage				
		Virginia	West Virginia	North and South Carolina	Pennsylvania	Delaware, Maryland and Tennessee
First	$ 25,000	$5.00	$7.50	$10.00	$10.00	$10.00
Next	25,000	4.00	7.50	10.00	8.00	8.00
Next	50,000	3.00	7.50	10.00	6.00	6.00
All over	100,000	2.50	7.50	10.00	6.00	5.00

In order to show the very favorable position enjoyed by Virginia with respect to the cost of bonds for its county treasurers, we have applied the rates in the foregoing tabulation to example bonds ranging from $50,000 to $1,000,000 and present this information in the tabulation following.

Amount of Bond	Per Annum Cost for Bond Indicated				
	Virginia	West Virginia	North and South Carolina	Pennsylvania	Delaware, Maryland and Tennessee
$ 50,000	$ 225	$ 375	$ 500	$ 450	$ 450
100,000	375	750	1,000	750	750
250,000	750	1,875	2,500	1,650	1,500
500,000	1,375	3,750	5,000	3,150	2,750
1,000,000	2,625	7,500	10,000	6,150	5,250

During 1950 and 1951, when the Auditing Committee and the Auditor of Public Accounts were negotiating a reduction in the rates for county treasurers' bonds, the aggregate bond coverage of all of these officers at March 15, 1950, was one of the factors discussed. The following comparisons of total bond coverage and annual premium cost for these officers at that date and January 1, 1952 (when a reduced rate scale became effective) with similar information used in this study as of June 30, 1959, is revealing:

	Total Bond Coverage	Total Annual Cost
March 15, 1950	$23,822,647	$111,221.09
January 1, 1952	24,084,900	72,163.95
June 30, 1959	35,677,816	101,177.39

From this tabulation it will be observed that, when the reduced rate scale became effective on January 1, 1952, the annual cost of total bond coverage of $24,084,900 was $39,057.14 less than the annual cost of total bond coverage of $23,822,647 at March 15, 1950. Because of steadily increasing revenues handled by county treasurers for the counties and the State, the required bond coverage at June 30, 1959, had increased to an aggregate of $35,677,816. In spite of the substantial increase in bond coverage between the dates of March 15, 1950, and June 30, 1959, the total annual cost to the counties and the State for the $35,677,816 bond coverage at June 30, 1959 was $10, 043.70 less than that at March 15, 1950.

For many years the annual rate for each $1,000 of bond coverage required of city treasurers in connection with funds handled by them for the Commonwealth has been $2.00 regardless of the amount of the bond. At June 30, 1959, the aggregate amount of these bonds was $6,745,500. At an annual rate of $2.00 for each $1,000 of bond coverage, the per annum cost amounts to $13,491.

Under the provisions of law, the premiums on surety bonds required of officers covered by this study—all of whom are required to be bonded for a period of more than one year—may be paid in advance for the entire period to which the bonds are to apply; and the amount of the annual premium on each bond thus paid in advance is subject to fifteen per centum discount for each year except the first year. If a bond for any reason is cancelled prior to its expiration, the portion of the premium paid and unearned at the date of cancellation must be refunded.

The premiums on the bonds of these officers have consistently been paid in advance and the fifteen per centum discount has been taken on the premiums for each year in excess of the first year. By this process the Commonwealth and the localities have realized additional substantial savings in the premium costs on the bonds of these officers.

During the course of this study the chairman of the Auditing Committee and the Auditor of Public Accounts, on instructions of the Committee, conferred with representatives of The Surety Association of America for purposes of seeing if a further reduction in the premium rates on county treasurers' bonds could be obtained. As has been previously stated, these bonds cover funds handled by these officers for both the State and their counties. After a thorough study of the information presented by the chairman and the auditor at this conference, The Surety Association of America agreed to a further reduction in its rate schedule applicable to bonds of county treasurers. If reference is made to page 6, it will be observed that at the present time the amount of each county treasurer's bond in excess of $100,000 is subject to a premium rate of $2.50 per annum for each $1,000. The Surety Association filed a new rate schedule on these bonds to become effective on January 1, 1960, and the new rate schedule has been approved by the State Corporation Commission, as follows:

First	$ 25,000 at $5.00 per M
Next	$ 25,000 at $4.00 per M
Next	$ 50,000 at $3.00 per M
Next	$150,000 at $2.50 per M
All over	$250,000 at $2.00 per M

This new approved rate scale will result in annual savings of $8,931.36 or 8.827% to the Commonwealth and the counties on the basis of the bonds in effect at June 30, 1959. Projecting the amount of the bonds at June 30, 1959 at these rates for treasurers' terms of four years and making allowance for the fifteen per centum discount for advance payment of the premiums for each year in excess of the first year, we determine a saving over such four-year period of $31,706.31.

CONCLUSION

At the time the annual audits of the accounts of county and city treasurers are made the Auditor of Public Accounts ascertains whether the bond of each officer is sufficient to meet the *minimum* amount required by law. If the bond in effect is deficient of the legally required *minimum* amount, this fact is brought to the attention of the court of appropriate jurisdiction or, in the case of three counties, the governing bodies. We have observed that a bond of a treasurer in excess of the present statutory *minimum* amount of fifteen per centum of the revenue received annually by him is rarely required.

It has consistently been the policy of the legislature to require the minimum bond of a county and city treasurer to be determined on a basis of a fixed percentage of the estimated revenue to be received annually by them. This provides a flexible method in determining the dollar amount of each bond. This procedure also permits the bond to be adjusted in proportion to funds handled by a treasurer.

In six urban counties of the State the bonds required of the treasurers at June 30, 1959, to cover funds handled for both the State and the counties varied in amounts from $1,000,000 to $4,500,000; and in the two largest cities the bonds required of the treasurers for handling State funds were $1,000,000 for one treasurer and $2,000,000 for the other treasurer. The bonds of each were determined and fixed on the basis of the present *minimum* requirement of fifteen per centum of the funds handled by them.

In the absence of a proven formula we can not state that these bonds are excessive when cognizance is given to the substantial amount of funds which the treasurers of these agencies are required to handle.

We do not feel that we can recommend a reduction in the fifteen per centum rate now required by law in arriving at a *minimum* bond for county and city treasurers because to reduce the minimum percentage to a figure less than the present fifteen per centum may cause the smaller bonds to be reduced to an unsafe level of coverage.

We have given thoughtful and serious consideration to recommending that the present fifteen per centum of revenue to be received annually remain the basis for determining a *minimum* bond, but that the law be amended to provide that, when this basis would require a bond in excess of a stipulated amount, the stipulated amount would be the *maximum* penalty of the bond. However, we recognize the fact that if a fixed amount, expressed in dollars, be written into the law the courts or, in the case of three counties, the governing bodies would be powerless in requiring a bond of a treasurer in excess of such stipulated amount even though they felt that such stipulated amount would provided inadequate bond coverage.

On page 9 of this report we pointed out that the Public Official Advisory Committee of The Surety Association of America was undertaking a study to see if it were possible to produce a workable and satisfactory formula for the ascertainment of minimum amounts of coverage for public officials. It is therefore recommended that before any change in existing law—with respect to the determination of the amount of a bond of a county or city treasurer—be made the results of the study being made by the subcommittee of The Surety Association of America be thoroughly considered and studied.

Respectfully submitted,

THOMAS H. BLANTON
LLOYD C. BIRD
FRANK P. MONCURE
GEORGE E. ALLEN, JR.
W. ROY SMITH
Auditing Committee of
The General Assembly

J. GORDON BENNETT
Auditor of Public Accounts