The Public Officials Bond—A Statutory Obligation Requiring "Faithful Performance," "Fidelity," and Flexibility

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I. Introduction

This article discusses the various forms of and issues relating to public officials bonds. This relatively generic term relates to bonds that are issued by the public official and the surety jointly in favor of the governmental entity that the public official serves. These bonds are commonly required by statute and create a three-party relationship more common in the context of surety bonds. Also frequently discussed in the context of public officials are public employee dishonesty coverages and similar fidelity policies. These instruments typically include the traditional two-party relationship where the insurer issues a policy or bond agreeing with the insured to indemnify the insured for certain losses arising from the dishonesty or other enumerated conduct of its employees. The distinctions in terminology and coverages are important when considering and addressing the issues that arise upon the insured or assured public entity's loss arising from the conduct of a covered public official or employee.

II. Public Officials Bond—General

A. STATUTORY FRAMEWORK

A public officials bond refers to an instrument "by which a public officer and a secondary obligor undertake to pay up to a fixed sum of money if the officer does not faithfully discharge the duties of his or

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her office."[1] A statutory public officials bond is thus a public officials bond mandated by statute. *Black's Law Dictionary* defines "official bond" as "a bond given by a public officer, conditioned on the faithful performance of the duties of office."[2] In the three-party surety structure, the public official is the principal, the bonding company is the surety (sometimes called the secondary obligor), and the government or, in many cases, the public being served by the official is the obligee.

Statutory bond requirements are found within the individual state codes.[3] They are typically interspersed throughout the code, although there is typically a "Public Officials" or "Public Office" chapter that has the general bond requirements and procedures as well as the authority for the issuance of such bonds. The requirements for the various individual officials, however, are found within the specific chapter relating to their office.[4] As seen in Appendix A, there are a multitude of bonds that are either required or authorized under the various state statutes.[5]

In general, bonds for public officials that are required by statute (hereinafter, "Official Bond[s]" or "Public Officials bond[s]") are mandatory for all elected and most public officials. This can range from the governor to local school board members. Statutes may require an Official Bond for an individual public official or may allow a blanket bond for a group of officials, such as the members of the board of

[1] Restatement (Third) of Suretyship & Guaranty § 71 cmt. c (1996).

[2] BLACK'S LAW DICTIONARY 171 (7th ed. 1999).

[3] Although all fifty states have statutory bond requirements, there is a statutory prohibition against requiring or obtaining surety bonds for officers or employees of the Federal Government in carrying out their official duties. *See* 31 U.S.C. § 9302 (2006).

[4] Included in Appendix A of this Article is a chart citing the statutory authority for the issuance of public officials bonds. The chart is limited to the code provision stating the over-arching requirement for public officials. Citing every statute that either requires or authorizes the issuance of a bond for every given public official would necessitate an appendix approaching 100 pages. For example, in California alone, there are at least 58 code provisions either requiring or authorizing the procurement of a bond to cover a public official or employee. In Arkansas, there are at least 50 such provisions.

[5] As this article discusses, there can be a difference in how the courts interpret bonds that "shall be issued" and bonds that "may be issued."

directors.[6] Depending on the statutory language, an Official Bond may be a "faithful performance bond," "fidelity bond," "public employees blanket bond," or "public employee dishonesty policy." While "faithful performance" bonds are by far the most common Official Bonds, the others may also be statutorily required. Each of the types of bonds listed above, whether statutory or non-statutory, are discussed herein.

B. GENERAL REQUIREMENTS

"Statutory bonds" by definition, Official Bonds are required when a statute so dictates. Often, the bond is required to be effective before or upon the taking of the oath of office by the employee or official. In other cases, an official bond may run indefinitely, covering each successive employee or official as they take office. The statutes will either mandate[7] or authorize[8] the procurement of a bond. If the controlling statutory language merely "authorizes" the issuance of a bond, that bond will only be a statutory Official Bond to the extent the language of the bond reflects the requirements and intent of the statute.[9] In *Price v. Arrendale*, discussed herein,[10] a bond was procured by the governmental entity to protect itself from losses caused by the employee's failure to perform his duties. Because the bond did not meet the criteria set forth in the authorizing statute, it was held to be a non-

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[6] *Compare* KAN. STAT. ANN. § 19-4207 (2005) (excluding county treasurer from officials that may be bonded with a blanket bond) *with* KAN. STAT. ANN. § 19-4203 (2005) (stating that for county officers and employees, a blanket bond may be purchased to cover both elected and appointed officers and employees).

[7] *See, e.g.*, ARK. CODE ANN. § 25-16-502 (2005) ("[T]he Auditor of State *shall execute* and deliver to the Governor a bond to the State of Arkansas . . . .") (emphasis added).

[8] *See, e.g.*, ARK. CODE ANN. § 26-52-105 (2005) ("The [Income Tax Director] *may require* such of the officers, agents, and employees as he may designate to give bond for the faithful performance of their duties . . . .") (emphasis added).

[9] *See* Price v. Arrendale, 168 S.E.2d 193 (Ga. Ct. App. 1969).

[10] *See* discussion *infra* Part IV.A.

statutory bond, not subject to the provisions of the code affecting official bonds.[11]

1. What Does the Bond Protect Against?

The Public Officials bond is commonly issued to protect against conduct or omissions by the named public official that constitutes a breach of the public official's duties of office. As is discussed in more detail below, these bonds guarantee against more than the public official's fraud or dishonesty and, in certain cases, can cover loss arising from neglect or omissions.

2. Who Does the Bond Protect?

A Public Officials bond may be issued for the benefit of the governmental unit in which the principal holds office, but also it can provide coverage to the general public.[12] The Bond is "in the nature of an Indemnity Bond rather than a Penal or Forfeiture Bond; it is, in effect, a contract between the officer and the government, binding the officer to discharge the duties of his or her office."[13] The Official Bond is not intended to protect the principal or the public official himself but rather is intended to protect the city or the entire citizenship served by the official.[14]

The Official Bond indemnifies those who have suffered a loss as a result of the official's misconduct, and in many cases the state statute will include a provision specifically allowing a member of the public to bring suit against the bond, if that individual has suffered a loss resulting from the official's misconduct.[15] To that end, while there is some

[11] *Id. See infra* note 81 and accompanying text.

[12] *See* Hugh E. Reynolds, Jr. & James Dimos, *Fidelity Bonds and the Restatement*, 34 WM. & MARY L. REV. 1249 (Summer 1993); 63C AM. JUR. 2D *Public Officers & Employees* § 130 (2005).

[13] 63C AM. JUR. 2D *Public Officers & Employees* § 130 (2005).

[14] *Id.*

[15] *See, e.g.,* IDAHO CODE ANN. § 59-815 (2005) ("Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the state of Idaho, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act

varying degree of specificity in the statutory requirements, almost all satisfy the general purpose of requiring an official to issue a bond for the faithful performance of his or her duties.[16] An Official Bond is taken "as assurance of compliance with the law."[17] It is designed to ensure that the official or employee will faithfully perform his or her duties while in office.

C. STATUTORY OFFICIALS BONDS—FIDELITY BONDS V. FAITHFUL PERFORMANCE BONDS

Often using the word "fidelity bond" to describe a "faithful performance" bond, the state statutes vary in their description of the Official Bonds that are required for their state employees and public officials.[18] Although the intent almost invariably is to require a faithful performance bond, many statutes use the term "fidelity bond." It may be a matter of mere semantics to legislatures drafting the statutes, but these terms are not interchangeable.

A fidelity bond is one designed to guarantee honesty. It typically consists of a contract "whereby one agrees, for consideration, to indemnify another against a loss arising from the want of honesty, integrity, or fidelity of an employee or other person holding a position of trust."[19] Bonding companies typically define "fidelity bonds" as

or default of such officer in his official capacity, and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.").

[16] Some statutes require bonds conditioned upon the fidelity or honesty of the public official.

[17] 12 AM. JUR. 2D *Bonds* § 6 (2005).

[18] *See, e.g.*, CAL. EDUC. CODE § 22259 (West 2005) (stating that, for the State Teacher's Retirement System, "[a]ll board members and officers and employees of the system shall execute a fidelity bond, in an amount determined by the board to be prudent, conditioned upon the faithful performance of the duties of the board member or employee").

[19] 35A AM. JUR. 2D *Fidelity Bonds & Insurance* § 1 (2005).

guaranteeing the honesty of employees and any losses arising from the dishonest actions of its employees.[20]

Conversely, a faithful performance bond is designed to guarantee that a public official or employee will act with honesty and/or in faithful performance of his or her official duties.[21] It can be issued as an individual bond for a specific public official, or, if the statutes so allow, it can come in the form of an employee blanket bond, covering all employees of a designated office or department. Although the states often use "fidelity bond" and "faithful performance bond" interchangeably, there is in fact a distinction between providing fidelity coverage and providing faithful performance coverage.

Simply put, a fidelity bond indemnifies a loss whereas a faithful performance bond guarantees the faithful performance of duties. Faithful performance of duties also, necessarily, includes fidelity and honesty to the public entity. A faithful performance bond covers the same dishonesty as a fidelity bond. In addition, it covers situations such as a loss of funds resulting from an employee's malfeasance, willful neglect of duty, bad faith or negligence. The two concepts get confused because the fidelity of a public employee is presumed by his "faithful performance" of his official duties. In other words, a faithful performance official bond would include coverage for dishonesty of a public employee or official while a typical fidelity bond would only cover losses resulting from dishonesty, and would not cover situations involving neglect or malfeasance.

[20] *See* CNA Surety—Glossary, http://www.cnasurety.com/resources/glossary.htm (last visited May 19, 2006) (defining "fidelity bond"); Rupp's Insurance & Risk Management Glossary (2002), *available at* http://insurance.cch.com/rupps/fidelity-bond.htm.

[21] CNA Surety—Glossary, http://www.cnasurety.com/resources/glossary.htm (last visited May 19, 2006) (defining "public official bonds"); Rupp's Insurance & Risk Management Glossary (2002), *available at* http://insurance.cch.com/rupps/public-official-bond.htm (defining public official bond as: "A surety bond that guarantees that a public official will faithfully perform his or her official duties and honestly manage funds entrusted to them. A law usually requires such a bond and prescribes the coverage.").

Some states recognize this distinction. For example, the Code of Laws of South Carolina provides as follows:

> (A) When bonding of county officials or employees is statutorily required, the governing body of a county may purchase a fidelity bond to cover all or a portion of the county officials and employees. A fidelity bond may be used instead of specific statutory bond requirements including, but not limited to, those found in Sections 12-39-10, 12-45-10, 14-17-40, 14-17-60, 14-17-350, 14-23-1050, 17-5-20, 17-5-70, 22-1-150, 22-1-160, 23-11-30, and 23-13-20. Any officials or employees not covered by a fidelity bond must be bonded as required by statute.
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> (B) The purchase of a fidelity bond as provided in subsection (A) or the replacement of an existing bond with a fidelity bond covering one or more county officials or employees must be evidenced by passage of a resolution by the county's governing body. A fidelity bond must meet or exceed the minimum value of the bond required by the statute or statutes for the covered officials or employees.[22]

Most states are not as clear in defining the terms and standards of care for "dishonesty" and "faithful performance" as South Carolina. For the states that do not make the distinction so clear, a comparison of the actual terms and conditions of a fidelity bond to the terms of a faithful performance bond illustrates the distinction. Before tackling the policies themselves, a brief definitional clarification is warranted.

As the mathematical adage goes, "all squares are rhombuses, but not all rhombuses are squares." In the context of this article, a similar proverb might read: "all 'faithful performance' bonds necessarily incorporate a dishonesty standard, but not all 'dishonesty' policies necessarily incorporate 'faithful performance.'" An issue created by this lack of parallelism arises not in cases where an employee acts dishonestly and the governmental entity carries a faithful performance

[22] S.C. CODE ANN. § 4-11-65 (2005).

bond; instead, a question arises where an employee or public official acts negligently, or is somehow hampered from performing his duties, but the governmental entity carries only a fidelity bond. While in the first situation the act would almost certainly be covered, in the latter case, the employee's act may not be covered because the employee did not act fraudulently or dishonestly.

The ordinary meaning of the words "fraud" and "dishonesty" refer to acts which "show a breach of trust or of financial integrity, coupled with deceit and concealment exercised in a position of trust and confidence and causing financial loss."[23] Couch further defines dishonesty, in general terms, as "a want of integrity in principle; a want of fairness and straightforwardness; a disposition to defraud, deceive, or betray; faithlessness, or a course of conduct generally characterized in the common speech of men as lacking in principle."[24] Faithful performance, on the other hand, does not include the additional requirements of deceit or concealment or want of integrity. Rather, a lack of faithful performance simply means the failure to do one's job—whether intentionally or negligently.

In 1982, the Court of Appeals for the Fourth Circuit explained that an insured could recover under a faithful performance bond for the negligent acts of an employee.[25] In *M.B.A.F.B. Federal Credit Union v. Cumis Insurance Society*, a credit union's general manager recommended a loan to the board of directors without any evidence of value of collateral. The general manager apparently failed to check out the collateral and directed another employee to process the loan, knowing that it had not been approved by the credit committee. A loss resulted and the lower court found that, based upon his acts, the general manager had been negligent.[26]

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[23] COUCH ON INSURANCE § 46:54 (2d ed. 1982).

[24] *Id.* (quoting Am. Sur. Co. v. Jay Lodge No. 87, F. & A.M., 196 N.E. 356 (Ind. 1935)).

[25] *See* M.B.A.F.B. Fed. Credit Union v. Cumis Ins. Soc'y, Inc., 681 F.2d 930 (4th Cir. 1982).

[26] *Id.* at 931.

The policy covered the "direct loss of, or damage to, any property, as defined herein, caused by the fraud or dishonesty of any of the Insured's employees, as herein defined, . . . or through the failure on the part of such employee . . . to well and faithfully perform his duties."[27] Cumis argued that an employee's failure "to well and faithfully perform his duties" necessarily required a showing of intentional or willful misconduct.[28] The Fourth Circuit disagreed and held as follows:

> The condition of an official bond, that the officer who gives it, shall "well and truly" execute the duties of his office, includes not only honesty, but reasonable skill and diligence. If the duties are performed negligently and unski[ll]fully; if they are violated from want of capacity or want of care; they can never be said to have been "well and truly executed."[29]

Applying this reasoning, the Fourth Circuit held that a lack of faithful performance included the negligent acts of employees in the carrying out of their duties.[30]

III. Statutory Bonds—"Faithful Performance Official Bonds"

In order to understand why a municipality or a government entity might want to purchase a fidelity bond, it is necessary to analyze the Faithful Performance Official Bond[31] as statutorily required by most states.

Faithful Performance Official Bonds are generally written for the benefit of the governmental unit in which the principal or employee holds office.[32] In effect, a Faithful Performance Official Bond is akin to a surety bond because it maintains the tri-partite relationship of the

[27] *Id*. at 932 (emphasis added).
[28] *Id*. at 931.
[29] Minor v. Mechanics' Bank of Alexandria, 26 U.S. 46, 69 (1828).
[30] *Id*. at 932.
[31] As used in herein, "Faithful Performance Official Bond" refers to a bond that is statutorily required (an Official Bond) and is conditioned upon the faithful performance of the official or employee's duties.
[32] Reynolds & Dimos, *supra* note 12, at 1251.

parties. The public officer or employee is the principal, the government entity is the obligee, and the bonding company is the surety/secondary obligor.[33]

The statutes requiring the Official Bond will often use phrases such as "the bond of each public officer required by law to give Bond must . . . be made payable to the [State]."[34] Other Official Bonds that may be procured are those given by an employer or officer of a local agency and will be made payable to the head of that particular local municipality or agency.[35] As seen throughout the various statutory provisions, Official Bonds are not issued for the protection of a public official or employee himself, but rather to protect the entity that is employing that officer or to protect the public from any injuries caused by the public official or employee's acts while in office. For example, the Tennessee Code provides as follows:

> Every official bond executed under this code is obligatory on the principal and sureties thereon:
>
> . . . .
>
> (3) *For the use and benefit of every person who is injured*.[36]

Most often is the case that an Official Bond ensures the faithful performance of the official's duties while in office. The standard of "faithful performance" provides a broad range of coverage from lapses in fidelity through ordinary negligence. The above-cited Tennessee Code provision states in full as follows:

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[33] Reynolds & Dimos, *supra* note 12, at 1253.

[34] ALA. CODE § 36-5-5 (2006). *See also, e.g.,* VA. CODE ANN. § 49-12 (2006) ("Every bond required by law . . . shall be made payable to the Commonwealth of Virginia."); OR. REV. STAT. § 177.010 (2006) (stating that the Secretary of State "give a bond, with sufficient sureties, to the State of Oregon").

[35] *See, e.g.,* TEX. LOC. GOV'T CODE ANN. § 22.075 (Vernon 2006) (treasurer of a municipality shall execute a bond "in favor of the municipality").

[36] TENN CODE ANN. § 8-19-301 (2006) (emphasis added).

> Every official bond executed under this code is obligatory on the principal and sureties thereon:
>
> (1) For any breach of the condition during the time the officer continues in office or in the discharge of any of the duties of such office;
>
> (2) For the faithful discharge of the duties which may be required of such officer by any law passed subsequently to the execution of the bond, although no such condition is expressed therein;
>
> (3) For the use and benefit of every person who is injured, as well by any wrongful act committed under color of such officer's office as by the failure to perform, or the improper or neglectful performance, of the duties imposed by law.[37]

The motives of a public official, as far as coverage under a Faithful Performance Official Bond is concerned, are irrelevant[38] and the liability of the surety is directly linked to the liability of the public official it covers.[39] In the case of an Official Bond, the surety and the governmental entity are prohibited from providing for limitations and contravention of any statutory requirements, such as limiting the statute of limitations or limiting the extent of coverage.[40] On the other hand, if an Official Bond includes coverage in addition to that which the statute

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[37] *Id.*

[38] Reynolds & Dimos, supra note 12, at 1250. However, the actions (or inactions) of the official are requisite. Even though a public official under a faithful performance bond may not be able to utilize his own "good faith" as a defense, in order to recover on a claim, the public official must have done (or not done) something in the performance of his official duties to cause an injury or loss.

[39] *See* McIntyre Square Assoc. v. Evans, 827 A.2d 446, 456 (Pa. Super. Ct. 2003).

[40] 63C AM. JUR. 2D *Public Officers & Employees* § 133 (2005).

requires, that additional coverage will be treated as a voluntary bond and will be enforceable as a common-law bond.[41]

A. STANDARD OF CARE—"FAITHFUL PERFORMANCE OF DUTIES"

In an Official Bond, "faithful performance" is what the correlating statute defines it to be. However, as the authors of an article published in 1997 aptly state, "[t]he statute . . . may be singularly unhelpful."[42] For example, sometimes the statute simply requests a bond "conditioned on the faithful performance of his or her duties."[43] On the other hand, sometimes the statutes include further language such as "for the faithful performance of the duties of their office and faithfully to account for all moneys coming into their hands."[44] Other states go even further; for example, in Iowa, the bond required for public officials must state as follows:

> That as . . . (naming the office), in . . . (city, township, county, or state of Iowa), the officer will render a true account of the office and of the officer's doings therein to the proper authority, when required thereby or by law; that the officer will promptly pay over to the officer or person entitled thereto all moneys which may come into the officer's hands by virtue of the office; that the officer

[41] *Id.*

[42] H. Bruce Shreves & Charles C. Coffee, *Faithful Performance Under Fidelity, Public Official and Statutory Bonds*, III FID. L. ASSOC. J. 97, 98 (1997). The article by Mssrs. Shreves and Coffee focuses on the subtle nuances of interpreting the phrase "faithful performance" as undertaken by a variety of courts. It reviews several cases analyzing a mix of statutory bonds (both public officials bonds and other statutorily required "faithful performance" bonds), and concludes that the only rule of thumb when it comes to the interpretation of faithful performance in a statutory bond is to "(1) analyze the bond; (2) analyze the statute calling for the bond's issuance; (3) analyze any statutes governing the conduct of the bonded official; and (4) analyze the applicable case law." *Id*. at 113.

[43] ALA. CODE § 36-17-1 (2005) (regarding bond for the State Treasurer).

[44] GA. CODE ANN. § 45-8-2 (2005) (regarding bond for "all collecting officers and all officers to hold public funds").

> will promptly account for all balances of money remaining in the officer's hands at the termination of the office; that the officer will exercise all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, securities, or other property appertaining to that office, and deliver them to the officer's successor, or to any other person authorized to receive the same; and that the officer will faithfully and impartially, without fear, favor, fraud, or oppression, discharge all duties now or hereafter required of the office by law.[45]

Alternatively, the statutes can provide more insight by specifically detailing the duties of the officer or employee, which can aid in determining whether duties have been faithfully performed. Where the statute does not specify the definition of "faithful performance," the language of the bond will control so long as the statutory intent is not thwarted.

In its broadest and most common-sense interpretation, faithful performance means an officer or employee has performed his or her official duties without dishonesty, malfeasance, or negligence. As discussed below, although the officer or employee's motives may be determinative with respect to coverage under a voluntary fidelity bond, they are irrelevant for a coverage determination under an Official Bond.[46] Notably, there must be an action or omission on the part of the bonded official in order to trigger coverage. A mere loss to a governmental entity which is in no way related to a public official's action or omission would not necessarily result in coverage. In other words, a loss caused by the negligence of an employee or official—even in the case where that official believed he was faithfully performing his duties—will be covered by a statutory bond, but a loss that results for some reason

[45] IOWA CODE § 64.2 (2006).

[46] *See* Reynolds & Dimos, *supra* note 12, at 1250 ("[T]he failure to perform faithfully the duties of an office will trigger the surety's obligation even though the motive was an honest one or the cause of the loss was merely negligence or oversight."); *see also* Kinzer v. Fid. & Deposit Co. of Md., 572 N.E.2d 1151 (Ill. App. Ct. 1991).

unrelated to the acts of the official will not be covered. Under a Faithful Performance Official Bond, the official does not necessarily have to act with intent, but she does have to act to trigger coverage.

As a result, courts have found a lack of faithful performance when an employee fails to perform statutory duties. For example, in *Centennial School District v. Kerins*,[47] the school tax collector was required to provide to his district, by the tenth of each month, the taxes he collected in the prior month, along with a monthly accounting report detailing these collections. Although Kerins collected taxes in each month from August 1999 through January 2000, he did not submit to the district the collected taxes for that period or the monthly accounting reports for these collections until February 2000.[48] Because the taxes were not submitted, there was substantial lost interest that the district could have earned on each monthly sum collected had each been submitted in a timely fashion. The district sought to collect that unearned interest from Kerins directly and from his surety, Fidelity & Deposit Company of Maryland. The surety took the position that its liability was limited to "situations in which there has been wrongdoing by the collector, such as absconding with funds."[49] The district disagreed that wrongdoing was a predicate, noting that "the purpose of obtaining a surety bond is to ensure, and provide a financial guaranty, for the faithful performance of the public official's duties."[50]

The statutory provision requiring the tax collector to obtain a bond stated that the bond shall be "conditioned upon the faithful performance of his duties as such tax collector."[51] Both the trial court and the reviewing court agreed that "Kerins did not fulfill his statutory obligations. He maintained possession of funds after he was required to pay them and, by doing so, breached his fiduciary responsibility as to the

[47] 840 A.2d 377 (Pa. Commw. Ct. 2003).
[48] *Id.* at 380.
[49] *Id.* at 385.
[50] *Id.* at 385-86.
[51] *Id*. at 386.

proceeds" and, therefore, the surety should also be "financially accountable for the collector's breach of these duties."[52]

In another case discussing statutory duties of bonded officials, the Texas Supreme Court found that, even though certain public officials were found to have been unconstitutionally elected, their improper acts while operating as a *de facto* board of trustees created liability for the insurer who issued their bonds. In *Fidelity & Deposit Co. of Maryland v. Concerned Taxpayers of Lee County, Inc.*,[53] the voters of Lee County, Texas, authorized the formation of a hospital district and a property-tax assessment for its support.[54] The purpose of the hospital district was to acquire a failing hospital in Lee County. Five trustees for the hospital district were elected. The surety filed statutory public official bonds for each of the trustees. These bonds were conditioned on the faithful performance of duties by the trustees, in compliance with the statute covering hospital districts.[55]

There were some issues regarding whether the Commissioner's Court of Lee County had satisfied all of the statutory prerequisites for calling the election, and the board of trustees was put on notice that there might have been constitutional infirmities in the election. However, despite the warnings, the board continued to hold meetings and move forward with plans to acquire the hospital.[56] A group called Concerned Taxpayers of Lee County brought suit to challenge the validity of the hospital district and the authority of the trustees. In the underlying, related suit, the trial court found as follows: (1) that the Hospital District and its trustees were operating in violation of the Texas Constitution; (2) that the trustees had violated the Open Meetings Act at several of their meetings; (3) that the Hospital District was permanently enjoined from operating; and (4) that plaintiffs were entitled to their reasonable and necessary attorney's fees.

[52] *Id.*
[53] 829 S.W.2d 923 (Tex. Ct. App. 1992).
[54] *Id.* at 924.
[55] *Id*. at 924-925.
[56] *Id*. at 925.

The surety then brought suit seeking a declaratory judgment that it had no liability for the judgment, which consisted of an award of attorneys' fees, because the trustees had not unfaithfully performed any of their duties while they were operating as a *de facto* hospital district. The Texas Supreme Court, however, did not follow the surety's logic and instead found as follows:

> [T]he trustees acted every time they held meetings and, therefore, had a duty to do so in the proper manner. The final judgment in the earlier lawsuit, relied upon by all parties to this suit, held that three of the board meetings held by the trustees violated the Open Meetings Act, constituting unfaithful performance of the trustees' official duties.[57]

Whether the employee acted in good faith is irrelevant. For example, in *Kinzer v. Fidelity & Deposit Co. of Maryland*,[58] a comptroller allowed non-appropriated funds to be spent on un-approved city contracts. The surety had issued to the City of Chicago a public employees blanket bond, in compliance with statutory mandates, which covered "Loss sustained by the Insured [the City] through the failure of any of the Employees, acting alone or in collusion with others, to perform faithfully his duties or to account properly for all monies and property received by virtue of his position or employment."[59] The comptroller himself, although found guilty of misappropriating the funds, was statutorily exempt from liability as to any resulting losses to the City because, although the expenditures made by the comptroller violated the Illinois Code, it was found that he had no reason to believe that these expenditures were illegal.[60]

The surety argued that, because the comptroller was immune from liability based on his good faith, the surety could not be liable under the bond as the comptroller did not fail "to perform faithfully his

[57] *Id*. at 927.
[58] 572 N.E.2d 1151 (Ill. App. Ct. 1991).
[59] *Id.* at 1152.
[60] *Id*. at 1153.

duties."[61] The court, however, relied on the remaining obligation under the bond, which provided coverage for the employee's failure to "account properly for all monies and property received by virtue of his position or employment" and found that the comptroller's good faith was irrelevant. As the court said, "[w]e fail to perceive what [the comptroller's] state of mind in so doing, i.e., his 'good faith,' had to do with whether he 'properly' accounted for funds under his control. Therefore, insofar as the language of the contract is concerned, [the comptroller's] 'good faith' is not relevant to [the surety's] liability under the bond."[62]

In other words, the fact that the city comptroller may have acted in good faith when he spent public money did not absolve the insurer from its duty to indemnify the City. The comptroller's state of mind—his good faith—had nothing to do with whether he "properly" accounted for funds under his control, and nowhere did the bond predicate insurer's liability on comptroller's liability. As discussed *supra*, the official's good faith was irrelevant; it was his actions that were determinative.

B. DISCOVERY AND TERMINATION UNDER AN OFFICIAL BOND

"A fidelity bond may validly limit the liability of the surety or insurer to losses or defaults discovered within a specified period of time."[63] Absent a provision in the statute limiting the discovery period for a default under an Official Bond,[64] the Bond language itself will control any discovery limitations, so long as they do not thwart the purpose and intent of the statutes themselves.[65] It should be simple. However, confusion as to the discovery element often arises in the context of statutory bonds—especially where the Official Bond is

[61] *Id.*

[62] *Id.* at 1154.

[63] 35A AM. JUR. 2D *Fidelity Bonds and Insurance* § 55 (2005).

[64] *See, e.g.*, KY. REV. STAT. ANN. § 134.270 (West 2005).

[65] For example, in California, the statute of limitations for bringing a cause of action on a bond of a public official is three years. *See* CAL. CIV. PROC. CODE § 338 (2006) ("Within three years . . . (e) An action upon a bond of a public official except any cause of action based on fraud or embezzlement is not to be deemed to have accrued until the discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action upon the bond.").

conditioned upon "faithful performance." Consider the dilemma where a public official fails to faithfully perform his official duty and undertakes to fraudulently cover his tracks: does the discovery period begin to run when the failure to perform occurs or when the fraud is discovered? On the one hand, discovery would relate to the discovery of the fraud under the theory that the fraud was concealing the failure to perform. But on the other hand, the failure to perform violates a public official's statutory duty to perform and that failure is "just as great without regard to whether it is actuated by fraud."[66]

Likewise, it also appears that issues are developing in Official Bond cases that have the following basic fact pattern: certain bonded employees are failing to perform all of their statutory duties; however, no losses are occurring. It is either generally known or at least suspected that the employees are not complying with the strict letter of the law as far as their statutory duties are concerned. After a period of time, a loss occurs and it arises out of the same or similar conduct that was ongoing and generally known. When did discovery occur?

Generally, courts have found that discovery in the context of other fidelity coverages occurs when the insured discovers facts that would cause a prudent person to conclude that a loss of the nature covered under the policy or bond has been or will be incurred.[67] In the context of Public Officials bonds, the covered cause of loss is frequently failure to faithfully discharge the duties of office, not fraud or dishonesty. Therefore, discovery of the public official's neglect prior to discovery of his fraudulent conduct would constitute discovery, absent provisions in the bond or statute to the contrary.[68] As the public entity receives the benefit of coverage for acts not rising to the level of dishonesty, the public entity should also be charged with the obligation of discovering and preventing the conduct before it rises to the level of dishonesty.

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[66] 63C AM. JUR. 2D *Public Officers and Employees* § 489 (2005).

[67] *See e.g.*, Am. Sur. Co. of N.Y. v. Pauly, 170 U.S. 133, 158 (1898); FDIC v. Aetna Cas. & Sur. Co., 903 F.2d 1073, 1079 (6th Cir. 1990); *Kinzer*, 652 N.E.2d at 28.

[68] Id.

Additionally, questions arise as to whom has to discover either the non-statutorily-conforming conduct or the loss. In the hypothetical fact pattern given above, if the failure to perform is generally known among the bonded employee's peers and/or subordinates, but not by his or her superiors, then can the knowledge of the subordinates be imputed to the party making the claim under the bond for discovery purposes? Or, does discovery of a failure to perform have to occur by a person with authority over the bonded employee for the discovery provision to be triggered?

Many fidelity policies and bonds contain provisions that address who must discover conduct in order for the insured to discover the loss. Cases discussing these provisions and addressing policies that do not address this issue have found that the relevant facts evidencing actual misconduct must become known to a "key" employee.[69] Since governmental entities, like private companies, can only act through their employees, the title and duties of the person or persons discovering the misconduct is critical to this analysis. The Illinois Appellate Court in *Kinzer v. Fidelity & Deposit Co. of Maryland* looked at the general law of agency to determine whether the public entity had "discovered" the conduct at issue. The court concluded that the municipality is charged with knowledge obtained by its "key" agents/employees that is acquired within the scope of the agent's/employee's authority.[70]

Official Bonds will be interpreted according to their plain language, subject to any limitations or expansions contained in the governing statutes.[71] Although public insureds or obligees may argue that the public policy requiring the bond dictates that any limitations on coverage be viewed with disfavor, courts have disagreed on issues relating to discovery and have concluded that the public entity is obligated to take actions to discover and prevent the continuation of misconduct of the bonded employees.[72]

[69] Kinzer v. Am. Sur. Co. of N.Y., 652 N.E.2d at 29.
[70] *Id.*
[71] *Id.* at 27-28.
[72] *See, e.g., id*. at 27.

As for an Official Bond providing blanket coverage, some states will provide specific guidelines as to the discovery and/or termination period for a blanket Official Bond;[73] otherwise, the terms of the bond itself will determine what discovery issues or termination requirements are in place. For example, the Official Bond form for notaries in the state of New Mexico states that the notary "shall faithfully discharge the duties of the office of Notary Public of the State of New Mexico from the date of his appointment until the expiration of his commission," at which point the bond obligation will become void.[74]

The key point regarding statutory Faithful Performance Official Bonds is to focus first on the statutory language and then on the language of the bond. So long as the statutory requirements are met, the bond may set its own discovery and termination provisions. Failing to review not only the provision requiring or authorizing the Official Bond, but also the provisions of the state code affecting all official bonds for that state is the proverbial "trap for the unwary." There may be restrictions on discovery and termination found elsewhere in a given code.

IV. Other Public Officials Bonds—Blanket Bonds and Fidelity Bonds

There are other public officials bonds that may or may not be statutorily mandated. The primary substantive difference between the statutory Official Bonds and the non-statutory bonds is that the non-statutory bond will not be bound by any statutory terms. It is an obvious outcome, but worth mentioning because, as discussed herein, the statutes controlling Official Bonds will affect how that bond is interpreted. There are two basic categories of "non-faithful performance" bonds: one is a public employees blanket bond[75] and the other is public employee

[73] *See, e.g.*, N.H. REV. STAT. ANN. § 27:1 (2005) (regarding bonds for county officials, "[b]lanket bonds obtained under this section shall provide for at least a 2 year discovery period from and after the date of termination of coverage thereunder").

[74] *See* New Mexico Notary Public Bond and Oath of Office Sample Form, http://bondforms.surety.org (last visited May 22, 2006).

[75] Note that blanket bonds may be statutorily authorized and therefore may fall under the purview and restrictions of an Official Bond. When dealing

dishonesty coverage. Before discussing these "other" bonds, a brief look at the parties to the bonds is warranted.

A. THE PARTIES TO THE CONTRACT

Aside from looking directly at the statutory language, determining who are the parties to a given bond or contract can be the key to ascertaining whether a bond is a statutory or a common-law bond. Statutory bonds, as discussed above, are typically in a true suretyship, tri-partite arrangement. They name the public official or employee as the principal, the governmental entity as the obligee, and the bonding company as the obligor. Non-statutory bonds, however, are more likely to be two-party indemnification agreements (often referred to as "fidelity bonds" or "fidelity policies") where the governmental entity is the insured.

For example, in the case of *Price v. Arrendale*,[76] a Georgia prison inmate sustained an injury as result of an allegedly negligent operation performed by a physician employed by the Board of Corrections. The Board of Corrections had procured a public employees blanket bond indemnifying the Board of Corrections for "Loss caused to the insured through the failure of any of the employees, acting alone or in collusion with others, to perform faithfully his duties and to account properly for all monies and property received by virtue of his position or employment during the bond period." [77] The inmate claimed the bond was a statutory bond required by the Georgia Code section, which provided in general that, while the chief custodial officer of penal institutions *shall* execute a bond to truly and faithfully discharge his duties, the Board of Corrections *may* require officials and employees, such as a prison medical officer, to also give bond.[78] If the inmate was correct that the bond in question was a statutory bond, then he would have the right as an "injured party" to bring suit on that bond, by virtue of the Georgia statute.

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with these bonds, looking at the statutes that govern the official or employee involved is imperative. *See generally,* Shreves & Coffee, *supra* note 42.

[76] 168 S.E.2d 193 (Ga. Ct. App. 1969).

[77] *Id*. at 195.

[78] *Id*.

However, the court held that the public employees blanket bond in this case was not a statutory bond because the bond provided for indemnification to the Board for any loss caused by the failure of an employee to faithfully perform his duties. It was a bond "in the nature of a policy of fidelity insurance insuring only the Board and the Prison Industries Administration for loss caused to the insured through acts of the employees."[79] Thus, even though a statute did authorize the Board to require its employees to post a bond, in this case, it was not the employee himself that posted the bond and, therefore, the bond was not a "statutory bond" subject to recovery by injured third parties.

B. THE PUBLIC EMPLOYEES BLANKET BOND

Although some Public Employees Blanket Bonds may be authorized by statute,[80] and therefore put into the class of Official Bonds, subject to all other statutes governing such bonds, "more often they are chosen to provide prudent protection to secure the governmental entity."[81] They are purchased by the governmental entity to protect the governmental entity. They do not protect the public or any other third party from the acts of public officials or employees. Whether a Public Employees Blanket Bond operates as a surety bond or as an indemnity agreement will depend upon the parties to the bond, language of the bond, the "nature of the coverage,"[82] and the precedent of the jurisdiction. The language of the bond must be analyzed to determine whether the insurer has assumed any liability for the public employee's acts (not a surety arrangement) or whether the primary obligation remains with the covered employee (a surety arrangement).[83] So long as the bond clearly provides that "it is the principal obligor [the official or

[79] *Id*. (internal quotation marks omitted).

[80] *See, e.g.,* FLA. STAT. § 38.09 (2005) ("The board of county commissioners of any county may accept a blanket surety bond issued by a solvent surety company authorized to do business in this state, conditioned upon the faithful performance of the duties of the deputy sheriffs appointed by a sheriff, in a sum to be fixed by the board of county commissioners. If such a blanket surety bond is accepted, individual surety bonds for each deputy sheriff are not necessary.").

[81] Reynolds & Dimos, *supra* note 12, at 1252.

[82] *Id*. at 1254.

[83] *Id*.

employee] who ought to perform the underlying obligation or bear the cost of performance,"[84] then the surety bond relationship between the parties will be maintained.[85] Succinctly put, "unless the statute or text of the bond makes the employee whose act causes the loss the functional equivalent of an 'additional insured,' . . . the surety relationship remains."[86]

As demonstrated by the cases below, a lengthy academic debate could be had on the "surety versus indemnity" argument.[87] In a sense, the Public Employees Blanket Bond melds the worlds of suretyship and indemnification. Sometimes these bonds are structured like a surety bond, with three-party relationships, but are interpreted and applied as contracts of indemnity. If the bond is issued to protect the government from losses for which the officer is not liable, then it is not a contract of surety.[88] But if an employee or officer voluntarily purchases a bond[89] to protect the governmental entity that is his employer or the public from losses due to his acts in public office, the surety on the bond is "primarily an indemnitor, though to the extent that [it] is liable for defaults for which the officer can be held," the surety on the bond is a surety.[90] In other words, "the employee, whether dishonest or negligent, still has the primary obligation and, hence, the carrier is truly a secondary obligor . . . . The secondary obligation is assumed solely for purposes of indemnifying the obligee or third parties against damage."[91]

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[84] RESTATEMENT (THIRD) OF SURETYSHIP & GUARANTY § 1 (1996).

[85] Reynolds & Dimos, *supra* note 12, at 1255.

[86] *Id*. at 1256.

[87] *See also* 13 AM. JUR. *Proof Of Facts* 3d § 2 (2005) (discussing whether a "fidelity bond" is a contract of suretyship or a form of insurance).

[88] RESTATEMENT (FIRST) OF SECURITY § 170 cmt. a (1941).

[89] Often, the public official will be reimbursed by the governmental entity for the cost of purchasing or maintaining a bond. *See, e.g.*, FLA. STAT. § 113.04 (2005) ("When any state officer or employee is required by statute or by the head of any state department to secure and give a fidelity bond, the premium therefor shall be paid from the necessary and regular expense account of the department to which such officer or employee shall be attached.").

[90] RESTATEMENT (FIRST) OF SECURITY § 170 cmt. a (1941).

[91] Reynolds & Dimos, *supra* note 12, at 1255.

In *First Virginia Bank-Colonial v. Baker*,[92] the Virginia Supreme Court held that a statutory Public Employees Blanket Bond was not a surety bond, but instead an indemnity bond.[93] The case involved a bank that filed suit against the clerk of the circuit court and her surety company because a recording clerk had improperly indexed a lien on a property. The bank made a loan secured by that property without knowledge of the existence of this improperly indexed lien and eventually had to pay off the subject lien when it foreclosed on the property.

The Public Employees Blanket Bond in this case named the clerk as the "insured," the county and state as the "obligee," and the insurer as "surety." The bond provided that "[t]he Surety . . . agrees . . . to indemnify the Obligee for the use and benefit of the Insured for . . . [l]oss caused to the Insured through the failure of any of the Employees . . . to perform faithfully his duties . . . ."[94] In other words, the bond was not intended to be a faithful performance bond on the part of the public official herself, but rather a bond indemnifying the official for any loss caused by her non-statutorily bonded employees. The court distinguished this agreement from a surety bond, which (1) allows an injured third party to bring a direct cause of action against the surety and (2) obligates the surety to "perform the obligation in the event that the principal obligor fails to perform."[95] An indemnity agreement, on the other hand, "is a bilateral agreement between an indemnitor and an indemnitee in which the indemnitor promises to reimburse his indemnitee for loss suffered or to save him harmless from liability."[96] Finding the Public Employees Blanket Bond to be a contract of indemnity, the court determined that the third-party bank had no direct right of action against the surety on the bond.

In another case, *City of Burlington v. Western Surety Co.*,[97] the city had obtained a non-statutory blanket bond covering "[l]oss caused to

[92] 301 S.E.2d 8 (Va. 1983).
[93] *Id*. at 11.
[94] *Id*. at 10-11.
[95] *Id*. at 11.
[96] *Id*.
[97] 599 N.W.2d 469 (Iowa 1999).

the Insured through the failure of any of the Employees . . . to perform faithfully his duties or to account properly for all monies and property received by virtue of his position or employment during the Bond Period."[98] During the bond period, the master key to all the school buildings in the district was lost. The fire department was responsible for keeping the master key, but it somehow became misplaced. The city undertook replacing all the locks to the school buildings and then submitted a claim to its insurer under the bond for the cost of the replacements.[99]

Turning to a brief discussion of the "nature of a fidelity bond," the court first stated that "purpose of a [public employees blanket bond] is to guarantee the honesty and faithful performance of the insured's employees by protecting the employer/insured against loss."[100] In a helpful explanation, the court distinguished fidelity bonds from liability policies as follows:

> A liability policy protects the insured against claims brought by third parties who have been injured by the insured's conduct. The liability insurer essentially reimburses its insured for any liability it may have to the third party by paying the third party on the insured's behalf and benefit. In contrasting liability insurance with a fidelity bond, it is helpful to note that in the liability context, the insured's loss is indirect; it is a third party who directly suffers the loss.[101]

After analyzing the facts of the case, the court found for the insurer, holding that the "loss" resulting from the disappearance of the master key was that of the school district, not the city.[102] Following the "well-established rules in interpreting insurance policies," the court read the public employees blanket bond to provide coverage to the insured,

[98] *Id*. at 471.

[99] *Id.* at 470.

[100] *Id*. at 471.

[101] *Id*. at 471 (citing ERIC MILLS HOLMES & MARK S. RHODES, HOLMES'S APPLEMAN ON INSURANCE § 3.3 (2d ed. (1996)).

[102] *City of Burlington*, 599 N.W.2d at 472.

the City of Burlington. It then determined that the school district was the owner of the buildings and therefore the only party responsible for replacing the locks and the only party against whom a claim could be brought in the event of a loss related to the missing key. According to the court, the fact that the city voluntarily stepped forward to pay the cost of replacing the locks did not change the fundamental fact that the city did not suffer any loss, as that term was intended in the bond.[103]

C. THE PUBLIC EMPLOYEE DISHONESTY POLICY

A more limited form of coverage for the acts of employees is the Public Employee Dishonesty Policy. This policy typically provides coverage to "governmental entities and subdivisions, such as cities, counties, states, fire districts, transit authorities, public hospitals, public educational institutions, and boards of education"[104] for the "for loss of, and loss from damage to, money, securities and property other than money and securities caused directly by employee dishonesty."[105] These true "fidelity bonds" may be statutorily required.[106]

The Public Employee Dishonesty Policy is all but identical to the Form A Coverage found in the Commercial Crime Policy but has a few additional provisions. The standard of care for recovery of a loss under a Public Employee Dishonesty Policy requires an employee to have acted with manifest intent and does not provide any coverage for negligent acts.

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[103] *Id*.

[104] Rupp's Insurance & Risk Management Glossary (2002), *available at* http://insurance.cch.com/rupps/public-employee-dishonesty-coverage-form-blanket.htm (defining "public employee dishonesty coverage form (blanket)").

[105] Rupp's Insurance & Risk Management Glossary (2002), *available at* http://insurance.cch.com/rupps/employee-dishonesty-coverage-form.htm (last visited May 23, 2006) (defining "employee dishonesty coverage form").

[106] *See, e.g.*, UTAH CODE ANN. § 17-16-11 (2005) (stating that county officers must obtain a general fidelity bond or theft or crime insurance "before the county officials, except the county treasurer, may discharge the duties of their respective offices").

1. The Parties

Public Employee Dishonesty Policies are typically two-party contracts. They are between the governmental agency, as the insured, and the insurance carrier. If "written for profit," these bonds guaranteeing the fidelity of officers and employees will be construed as contracts of insurance.[107]

2. Form O and Form P of the Commercial Crime Policy

Sample forms of the standard Public Employee Dishonesty Policy are Form O (per loss) and Form P (per employee)[108] of the Commercial Crime Policy ("CCP"). Both Form O and Form P (together referred to herein as "Form O/P") are identical to Form A of the CCP, but include a few additional exclusions, conditions, and definitions that relate to public office. Excluded under Form O/P are bonded employees (those public officials or employees required by law to be individually bonded), treasurers, tax collectors, and any damages resulting from an employee depriving another person of his civil rights or engaging in tortious conduct. Another difference in the Public Employee Dishonesty Policy is that it is written for the sole benefit of the insured, i.e. the governmental entity. Whereas some statutory Official Bonds inure to the benefit of any injured party, the Public Employee Dishonesty Policy ensures that no third parties may bring a cause of action against the insurer.

3. "Manifest Intent" as the Standard of Care

The other striking difference between a Public Employee Dishonesty Policy and a faithful performance bond is the standard of care. In a faithful performance bond, mere negligence on the part of the bonded employee that results in a loss will be enough to trigger coverage, whereas under a Public Employee Dishonesty Policy, there must be "manifest intent" to cause the governmental entity a loss and also for the employee or a person intended by the employee to obtain a

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[107] 63C AM. JUR. 2D *Public Officers & Employees* § 132 (2005).

[108] Attached hereto as Appendix B is a copy of Form O (CR 00 16 (10/90)) and Form P (CR 001 17 (10/90)).

financial benefit.[109] While dishonesty and theft are inherently covered in faithful performance standard of most Official Bonds, the Public Employee Dishonesty Policy only covers an employee's dishonest acts committed with requisite level of "manifest intent."

Development of the "manifest intent" standard deserves its own dissertation,[110] but on its most rudimentary level, the standard requires more than mere negligence. The courts are diverse in their opinions on whether manifest intent should be measured by "specific intent," "general intent," or by a "purely objective" standard.[111] Suffice it to say, when determining coverage under a Public Employee Dishonesty Policy, the jurisdictional adaptation of the "manifest intent" standard must be well researched.

4. Codes and Cases

Arkansas Code

Interestingly, at least one state has drafted statutory provisions that provide for the procurement of a "self-insured fidelity bond" to stand in the place of any statutorily required public officials bond. The Arkansas code includes a chapter entitled "Self-Insured Fidelity Bond Program,"[112] which was created because "considerable savings might be effected by the establishment of a self-insured fidelity bond program for state officials and employees, county officials and employees, municipal officials and employees, and school district officials and employees."[113]

The program was specifically created and designed "to establish a governmental bonding board to develop a self-insured fidelity bond program for those officials and employees."[114] Any of the public officers, officials, and employees participating in Arkansas's Self-

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[109] *See* Appendix B (definition of "Employee Dishonesty").

[110] *See* THE "MANIFEST INTENT" HANDBOOK (Samuel J. Arena, Jr. et al. eds., 2002); Michael Keeley, *Employee Dishonesty Claims: Discerning the Employee's Manifest Intent*, 30 TORT & INS. L. J. 915 (Summer 1995).

[111] THE "MANIFEST INTENT" HANDBOOK, *supra* note 110, at 15.

[112] ARK. CODE ANN. § 21-2-701, *et seq.* (2006).

[113] *Id.* § 21-2-701(b).

[114] *Id.* § 21-2-701(c).

Insured Fidelity Bond Program may procure a fidelity bond "in lieu of all statutorily required bonds."[115] The scope of coverage under this program parallels that of Form O/P, covering "actual losses sustained by a participating governmental entity through any fraudulent or dishonest act or acts committed by any official or employee of the participating governmental entity";[116] excluding coverage for civil rights violations and losses resulting from an employee's tortious conduct;[117] and limiting recovery to the governmental entity only, not third parties.[118] Notably, the Arkansas program does not specify a "manifest intent" standard of care as is set forth in Form O/P coverage.

<u>City of Concordia v. Am. States Insurance</u>

There are only a few cases addressing the scope of coverage under Public Employee Dishonesty Policies. The most recent case discussing coverage under Form O/P of the CCP is *City of Concordia v. American States Insurance Co.*,[119] an unpublished opinion from the Kansas Court of Appeals. The case involved the issue of whether the term "individually bonded" as used in the exclusion language of Form O/P of the commercial crime policy for losses caused by city employees was ambiguous such that the city manager, who was required by ordinance to be bonded, was covered under policy. Specifically, in Kansas, no statute required that the city manager be bonded with an individual bond versus a blanket bond, so the question was whether the language of the policy could be reconciled with the language of the statutes.[120]

The City of Concordia applied for a CCP to cover all city employees. The applications for the policy required the city to list all officers, officials, and employees to which the insurance would apply. Notably, the application included the following statement: "Note: Persons required by law to be individually bonded and treasurers or tax

[115] *Id.* § 21-2-703.
[116] *Id.* § 21-2-704(a).
[117] *Id*. § 21-2-704(d).
[118] *Id*. § 21-2-704(e).
[119] No. 89,200, 2003 WL 21948009 (Kan. Ct. App. 2003).
[120] *Id.* at *2.

collectors by whatever title known are automatically excluded from coverage under Coverage Forms O and P."[121] This warning referred to exclusion 1(c) of Form O/P, which states as follows: "1. Additional Exclusions: We will not pay for loss or damages as specified below . . . c. Bonded Employee: loss caused by any 'employee' required by law to be individually bonded."[122] Under the Kansas statutes, "The [city] manager shall receive a salary to be fixed by the commission and shall give bond for the faithful performance of his or her duties in such amount as may be provided by ordinance."[123] The corresponding city ordinance regarding the city manager's bond states as follows:

> The city manager shall, before entering upon the duties of his office, give a good and sufficient bond to the city, duly approved, conditioned upon the faithful performance and discharge of his duties, and to properly account for all public monies coming into his hands. Such bond shall be in the amount of five thousand dollars ($5,000.00).[124]

Neither the state statute nor the city ordinance required that the city manager's bond be an individual bond, nor did either prohibit the city manager's bond from being included as part of a blanket bond. The city argued, therefore, that the policy exclusion did not apply because the city listed the city manager as one of the covered employees under the policy. The insurer, however argued that the Kansas statutes, taken as a whole, demonstrate that "when a city official is required to give bond, it is implied that it should be an individual or separate bond unless a blanket bond is expressly permitted."[125]

The court reviewed the construction of similar Kansas statutes and ultimately determined that the Kansas legislature could have

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[121] *Id*. at *1.

[122] *Id*.

[123] *Id.* at *4 (quoting KAN. STAT. ANN. § 12-1013).

[124] *City of Concordia*, 2003 WL 21948009 at *4-5 (quoting CONCORDIA, KAN., ORDINANCE 2-54).

[125] *Id*. at *5 (citing several Kansas statutes with provisions that expressly authorize a blanket bond to cover a specific individual officer or employee).

included a restriction against blanket bonding for a city manager, if it had so desired.[126] Therefore, the court ruled that (1) the city manager was required to give bond; (2) the city disclosed that the manager was to be included in the CCP issued by the insurer; (3) the insurer did not object or raise the exclusion when it issued the policy; (4) that the policy language regarding the term "individually bonded" was ambiguous; (5) the definition relied upon by the city (i.e., that the city manager's bond could be part of a blanket bond) was reasonable; and (6) "[t]he insurer has the obligation to protect itself from possible misinterpretation by careful drafting of its own policy exclusion language."[127] As with any other common law policy of insurance, the court analyzed the language of the policy and compared it to the legislative intent surrounding official bonds.

What is truly curious about this opinion is that the CCP does not include "faithful performance" as a condition of or endorsement to the policy. In other words, the court found that the city manager could not be excluded from coverage under the policy, but in another case with a different set of facts, one questions whether the CCP would meet the statutory requirement that the city manager give a bond conditioned upon the faithful performance of his duties. The facts do not make clear whether the city manager was covered under any bond or policy other than the CCP in question. If another Official Bond had been procured to cover his faithful performance of duties, it is unclear why the city did not seek recovery under that bond. This case addressed whether the term "individually bonded" meant that the city manager had to have his own individual bond and was therefore excluded from the Form O coverage, not whether the blanket CCP actually met the statutory requirement that the official give a faithful performance bond. If nothing else, this case demonstrates the cloud of confusion that hangs over these "similar, but different" bonds and policies.

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[126] *Id.*
[127] *Id*.

Meeker County v. North River Insurance[128]

Some governmental entities meet the statutory Official Bond requirements by purchasing a "hybrid" CCP—one that maintains traditional public employee dishonesty coverage, as described in Form O/P, but also carries "Faithful Performance" endorsement to meet the statutory requirements for Official Bonds as to certain officers and employees. One case involving such a policy is *Meeker County v. North River Insurance*. In *Meeker*, in order to satisfy statutory requirements for the bonding of public officials, Meeker County purchased a CCP which included coverage for "Public Employee Dishonesty" and also included an endorsement, labeled "Faithful Performance of Duty," that specifically amended the "Public Employee Dishonesty" coverage.[129] The endorsement specifically provided as follows:

> 1. The following is added as a Covered Cause of Loss:
>
> Failure of any "employee" to faithfully perform his or her duties as prescribed by law, when such failure has as its direct and immediate result a loss of your Covered Property, including inability to faithfully perform those duties because of a criminal act committed by a person other than an "employee".[130]

Notably, for the purposes of this case, the endorsement to the CCP also contained an exclusion that stated as follows:

> 2. The following exclusion is added:
>
> Depository Failure: loss resulting from the failure of any entity acting as a depository for your property or property for which you are responsible.[131]

[128] 2001 WL 1636245 (D. Minn. 2001).
[129] *Id*. at *1.
[130] *Id*.
[131] *Id*.

During the policy term, the county treasurer purchased two certificates of deposit from a single bank, the total amount of the certificates being approximately $190,000. The bank failed and was ultimately placed in receivership by the Comptroller of Currency.[132] The FDIC reimbursed to the county a total of $100,000 on the certificates, leaving a $90,000 loss. The county sought recovery under the CCP and its faithful performance endorsement for the total loss, arguing that its loss was the result of the county treasurer's failure to faithfully perform her duties as prescribed by law because the treasurer failed to ensure that all county funds were fully insured by the FDIC.[133] The insurer denied the claim based on the exclusion stated in the policy endorsement, asserting that the failed bank was the depository for the county's property and therefore any loss resulting from the bank's failure was excluded.

The court first set out the standards for the interpretation of an insurance contract and determined that no ambiguities existed in the language of the policy or the endorsement. Agreeing with the insurer, the court found that the exclusion was "clear and unambiguous and must be given effect."[134] Thus, although the court found that the actions of the treasurer "certainly [fell] within the purview of the 'Faithful Performance' endorsement,"[135] the exclusionary language was also applicable and, in this case, controlled the outcome.

Fournier v. Hartford Fire Insurance Co.[136]

In another "hybrid" CCP case, a plaintiff tested the enforceability of the Form O/P exclusion for civil rights violations and also the condition that the CCP be for the sole benefit of the governmental entity. The case involved alleged improper employment decisions by the county sheriff, who was covered under the county's blanket CCP for public employee dishonesty. The CCP in question

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[132] *Id.*
[133] *Id.* at *2.
[134] *Id.* at *3.
[135] *Id*.
[136] 862 F. Supp. 357 (N.D. Ga. 1994).

contained a "faithful performance" endorsement expanding coverage for loss caused by the following:

> Failure of any "employee" to faithfully perform his or her duties as prescribed by law, when such failure has as its direct and immediate result a loss of [the insured's] Covered Property, including the inability to faithfully perform those duties because of a criminal act committed by a person other than an "employee".[137]

The plaintiff(s) alleged that the county sheriff transferred and reassigned plaintiffs to different job duties, in violation of their civil rights. Hartford asserted that the CCP excluded coverage for civil rights violations and did not allow the plaintiffs, who were not named insureds, to bring a direct action against the insurer.[138] Interestingly, Hartford also raised the issue that the sheriff was excluded as an employee "required by law to be individually bonded"—the same argument raised in the *City of Concordia* case discussed *infra*.[139] In a footnote, the court stated as follows:

> Hartford also argues that another policy provision excludes coverage for employees who are required to have an individual bond by state law and that, pursuant to O.C.G.A. § 15-16-5, Sheriff Bell was required to have such a bond. Although it is not clear from the record, it appears that the policy at issue may have been intended to fulfill Sheriff Bell's statutory bond requirement. Thus, Hartford's argument with regard to this exclusion seems strained. The Court need not address the argument, however, as it concludes that either of the other policy provisions relied upon by Hartford bars plaintiffs from maintaining this action against Hartford directly.[140]

[137] *Id.* at 360.
[138] *Id.* at 361.
[139] *See infra* text and accompanying notes 121-29.
[140] *Fournier*, 862 F. Supp. at 361 n.2.

The crux of the plaintiffs' argument for coverage involved their interpretation that the sheriff was not an "employee" as that term is used in the policy's exclusion provision. In making their argument, plaintiffs relied upon the definition of "employee" in the policy, which provides that the County Commission must "direct and control" the activities of an individual in order for that individual to be an "employee" of the insured. The plaintiffs attempted to argue that the sheriff was an elected official, not subject to the direction and control of the County Commission and therefore not an "employee" contemplated by the civil rights exclusion.[141] Hartford responded that, if the sheriff is not an "employee," he would not be covered by the CCP in the first place. Agreeing with the response of Hartford, the court aptly noted: "Essentially, plaintiffs argue that Sheriff Bell is an 'employee' for purposes of determining coverage under the policy but he is not an 'employee' for purposes of construing the exclusion for civil rights violations by employees. Plaintiffs cannot have it both ways."[142]

As for the "sole benefit" condition of the policy, the court simply reasoned as follows:

> [P]laintiffs argue that they should be able to sue [the sheriff's] insurer directly for damages allegedly caused by [the sheriff]. Plaintiffs' brief is, however, void of any authority to support the proposition that an injured party has a right to maintain suit against an insurance company for the alleged misconduct of an individual covered by an insurance policy. In absence of any authority to support plaintiffs' arguments, the Court cannot conclude that the policy provision at issue contravenes the public policy of the state of Georgia.[143]

As a result, the civil rights exclusion and the sole benefit condition of Form O/P of the CCP have been upheld as valid and enforceable.

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[141] *Id.* at 361-62.
[142] *Id*. at 362.
[143] *Id.*

D. TERMINATION OF COVERAGE

The period of coverage under a CCP is set by the policy itself. Generally, there are no statutory provisions that would affect the language of the policy, although it is conceivable that a "hybrid" policy that contains a faithful performance endorsement may be subject to statutory conditions, if that endorsement is meant to stand as a public officer or employee's Official Bond. Also, there are some statutes specifically requiring the procurement of a "fidelity bond" covering theft and dishonesty of a public official. In such cases, termination will depend on the applicable statutory provisions.

An important contrast between Official Bonds and Public Employee Dishonesty Policies is that while the Official Bond has a termination standard that is usually tied to the official's term in office, a Public Employee Dishonesty Policy has a much more specific termination clause. Cancellation of a coverage as to any employee covered under the Public Employee Dishonesty Policy will occur immediately upon discovery by the governmental entity or by any "official or employee authorized to manage, govern or control [the insured's] employees" of any dishonest act committed by that employee "whether before or after becoming employed" by the insured.[144] The discovery is specifically tied to the dishonest acts of the covered employee and termination of coverage is automatic. The standard for termination of a Public Employee Dishonesty Policy as to a given employee is higher than that for an Official Bond, but the penalty is harsher.

V. Commonality of Policies and Claims

Official Bonds and Public Employee Dishonesty Policies are exceedingly common. Public officials are either required by statute or by their supervising governmental entity to obtain a bond as a condition of their holding office. For officials and employees that are not statutorily required to give bond, their supervising office would be remiss, if not foolish, not to carry some protection for the acts of the their employees. Many insurers offer insight into the kinds of public official policies that

[144] Form O/P, "Additional Conditions," attached hereto as Appendix B.

are available and what level of coverage a given municipality or entity might need.[145]

VI. Conclusion

Unfortunately, there is no strict uniformity in the kinds of bonds that are statutorily required for public officials. No mnemonic adage or term of art can be applied. Predominantly, most bonds required of a public official are conditioned upon his or her "faithful performance" of his duties; however, a statute may also require a bond specifically ensuring the fidelity of its public officials. Regardless of the kind of bond that is statutorily required, the effect of the provision remains the same—all statutes relating to the official bond must be considered. Where a non-statutory or voluntary bond will be interpreted by its terms and conditions, a statutory bond will have the additional oversight of the provisions affecting its issuance.

Municipalities and other governmental entities are faced with many options when it comes to protecting the public and themselves from the acts of its public officials and employees. Where a statute controls, the type of bond to be procured should be obvious. However, bonding companies may offer policies that go above and beyond the statutory requirements, or, in some cases, may fall short of those requirements. Whether issuing the policy or purchasing a bond, familiarity with the state code and what statutory provisions are required cannot be over-emphasized. Both the bonding companies and the governmental entities must be clear about who are the parties to the bond and what obligations, whether statutory or not, are covered.

[145] For a good example of a Q&A brochure offered to municipalities, see LMCIT Risk Management Information, *available at* http://www.lmnc.org/pdfs/Bond.pdf (last visited May 24, 2006).

APPENDIX A

SURVEY OF GENERAL STATE LAWS REGARDING OFFICIAL BONDS[146]

STATE:	CITATION:	TITLE/CHAPTER:	CHAPTER/SUB-CHAPTER/PART:
ALABAMA	ALA. CODE §§ 36-5-1, et seq.	Public Officers and Employees	Official Bonds
ALASKA	ALASKA STAT. § 39.05.050	Public Officers and Employees	Qualifications, Appointment and Tenure: Surety Bonds
ALASKA	ALASKA STAT. §§ 39.15.010, et seq.	Public Officers and Employees	Official Bonds
ARIZONA	ARIZ. REV. STAT. ANN. §§ 38-251, et seq.	Public Officers and Employees	Qualification and Tenure: Official Bond
ARKANSAS	ARK. CODE ANN. § 21-2-101, et seq.	Public Officers and Employees	Commission, Oath and Bond

[146] This Appendix provides only the general statutes that govern official bonds for the listed state. Every state has specific statutes (in some cases voluminous in number) authorizing and setting the terms for the officers or employees that are required to give an "official" bond. These would include state-level officers and employees as well as county and municipal workers. This Appendix is only meant to direct users to the general provisions governing the broad category of official bonds.

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STATE:	CITATION:	TITLE/CHAPTER:	CHAPTER/SUB-CHAPTER/PART:
ARKANSAS	ARK. CODE ANN. § 21-2-701, et seq.	Public Officers and Employees	Commission, Oath and Bond—Self-Insured Fidelity Bond Program
CALIFORNIA	CAL. GOV'T CODE §§ 1450 TO 1653	Gov't Code—General Public Officers and Employees	Official Bonds
CALIFORNIA	CAL. GOV'T CODE § 24150, et seq.	Gov't Code—Gov't of Counties Officers	Officers Generally – Bonds
COLORADO	COLO. REV. STAT. § 24-13-101, et seq.	Government—State	Official Bonds
COLORADO	COLO. REV. STAT. § 30-10-110	Government—County	County Officers—Bonds of Officers

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STATE:	CITATION:	TITLE/CHAPTER:	CHAPTER/SUB-CHAPTER/PART:
CONNECTICUT	CONN. GEN. STAT. § 4-20	Management of State Agencies	State Appointive Officers
DELAWARE[147]	DEL. CODE ANN. tit. 29, § 5107	State Government	Public Officers and Employees Cancellation of Bond on Expiration of Term
DELAWARE	DEL. CODE ANN. tit. 18, § 6543	Insurance Code	Insurance for Protection of State Self-Insured Fidelity Bond
FLORIDA	FLA. STAT. § 113.01, et seq.	Public Officers, Employees and Records	Commissions
GEORGIA	GA. CODE ANN. § 45-4-1, et seq.	Public Officers and Employees	Official Bonds

[147] DELAWARE—no general provisions regarding public official's bonds, although an official bond may be required for a given office.

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STATE:	CITATION:	TITLE/CHAPTER:	CHAPTER/SUB-CHAPTER/PART:
HAWAII[148]			
IDAHO	IDAHO CODE ANN. 59-801, et seq.	Public Officers in General	Bonds of Officers and Public Employees
ILLINOIS	5 ILL. COMP. STAT. 260/0.01, et seq.	Government—General Provisions	Official Bond Act
ILLINOIS	5 ILL. COMP. STAT. 265/0.01, et seq.	Government—General Provisions	Holdover Official Bond Act
ILLINOIS	5 ILL. COMP. STAT. 270/0.01, et seq.	Government—General Provisions	Official Bond Payment Act
IOWA	IOWA CODE § 64.1, et seq.	Elections and Official Duties	Public Officers and Employees Official and Private Bonds

[148] HAWAII—no general provisions regarding public official's bonds, although an official bond may be required for a given office.

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STATE:	CITATION:	TITLE/CHAPTER:	CHAPTER/SUB-CHAPTER/PART:
KANSAS	KAN. STAT. ANN. § 75-4101, et seq.	State Departments; Public Officers And Employees	Surety Bonds and Insurance
KENTUCKY	KY. REV. STAT. ANN. § 62.050, et seq.	Offices and Officers	Oaths and Bonds
LOUISIANA	LA. REV. STAT. ANN. § 42:181, et seq.	Public Officers and Employees	Qualification by Taking Oath and Giving Bond
MAINE[149]			
MARYLAND[150]	MD. CODE ANN., STATE GOV'T § 9-1704	Miscellaneous Executive Agencies	Maryland State Employees Surety Bond Committee

[149] MAINE—no general provisions regarding public official's bonds, although an official bond may be required for a given office.

[150] MARYLAND—no general provisions regarding public official's bonds, but the state does have a designated "State Employees Surety Bond Committee" to oversee the issuance of official bonds for given officers/employees.

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STATE:	CITATION:	TITLE/CHAPTER:	CHAPTER/SUB-CHAPTER/PART:
MASSACHUSETTS	MASS. GEN. LAWS ch. 30 §§ 14 TO 20	Laws Relating To State Officers	General Provisions Relative To State Departments, Commissions, Officers And Employees
MICHIGAN	MICH. COMP. LAWS §§ 15.1 TO 15.6	Public Officers and Employees	Bonds of State Officers and Employees
MINNESOTA	MINN. STAT. ANN. §§ 574.01, et seq.	Compensatory and Collection Remedies	Bonds, Fines & Forfeitures
MISSISSIPPI	MISS. CODE ANN. §§ 25-1-13 TO 25-1-41	Public Officers and Employees; Public Records	Public Officers; General Provisions
MISSOURI	MO. REV. STAT. § 170.010, et seq.	Public Officers and Employees, Bonds and Records	Bonds of Officers and Contractors for Public Works

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STATE:	CITATION:	TITLE/CHAPTER:	CHAPTER/SUB-CHAPTER/PART:
MONTANA	MONT. CODE ANN. § 2-9-501, ET. SEQ.	Government Structure and Administration	Liability Exposure and Insurance Coverage—General Provisions Related to Official Bonds
NEBRASKA	NEB. REV. STAT. § 11-101, et seq.	Bonds and Oaths, Official	
NEVADA	NEV. REV. STAT. § 282.010, et seq.	Public Officers and Employees	Official Bonds and Oaths
NEW HAMPSHIRE	N.H. REV. STAT. ANN. § 93-B:1, et seq.	Public Officers and Employees	Officials and Employees Bonds
NEW JERSEY	N.J. STAT. ANN. § 52:14-17.16	State Government, Departments and Officers—Executive and Administrative Departments, Officers and Employees	General Provisions—Bonding of State Officers and Employees

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STATE:	CITATION:	TITLE/CHAPTER:	CHAPTER/SUB-CHAPTER/PART:
New Mexico	N.M. Stat. § 10-2-1 to 10-2-17	Public Officers and Employees	Bonds
New York	N.Y. Pub. Off. Law § 11, et seq.	Appointment and Qualification of Public Officers	Official Undertakings
New York	N.Y. Pub. Off. Law § 21, et seq.	Appointment and Qualification of Public Officers	Actions on Official Bonds or Undertakings
North Carolina	N.C. Gen. Stat. § 58-72-1, et seq.	Insurance	Official Bonds
North Dakota	N.D. Cent. Code § 26.1-21-01, et seq.	Insurance	State Bonding Fund
Ohio	Ohio Rev. Code Ann. § 3.30, et seq.	General Provisions	Officer; Oaths; Bonds

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STATE:	CITATION:	TITLE/CHAPTER:	CHAPTER/SUB-CHAPTER/PART:
OKLAHOMA	OKLA. STAT. tit. 74, § 591, et seq.	State Government	Official Bonds
OREGON[151]	OR. REV. STAT. ANN. § 740.352, et seq.	Insurance	Insurance Policies Generally; Property and Casualty Policies
OREGON	OR. REV. STAT. ANN. § 291.011	Public Financial Administration	State Financial Administration—Fiscal Duties of Department—Blanket fidelity bonds for state officers and personnel
PENNSYLVANIA	71 PA. CONS. STAT. § 634	State Government	Powers and Duties of the Department of General Services and Its Departmental Administrative and Advisory Boards and Commissions—Bonds and liability insurance

[151] OREGON—general provisions regarding public official's bonds, although an official bond may be required for a given office.

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STATE:	CITATION:	TITLE/CHAPTER:	CHAPTER/SUB-CHAPTER/PART:
RHODE ISLAND	R.I. GEN. LAWS § 42-20-9	State Affairs & Government	Administration of State Departments
SOUTH CAROLINA	S.C. CODE ANN. § 8-3-10, et seq.	Public Officers and Employees	Commissions, Oaths And Bonds
SOUTH DAKOTA	S.D. CODIFIED LAWS § 3-5-1, et seq.	Public Officers and Employees	Official Bonds
TENNESSEE	TENN. CODE ANN. § 8-19-101, et seq.	Public Officers and Employees	Bonds of Officers
TEXAS	TEX. GOV'T CODE ANN. § 604.001, et seq.	Public Officers and Employees	Official Bonds
UTAH	UTAH CODE ANN. § 52-1-1, et seq.	Public Officers	Official Oaths and Bonds
VERMONT	VT. STAT. ANN. tit. 3, §§ 251, 252	Executive	State Officers and Employees Bonded Officials

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STATE:	CITATION:	TITLE/CHAPTER:	CHAPTER/SUB-CHAPTER/PART:
VIRGINIA	VA. CODE ANN. §§ 2.2-2809 TO 2811	Administration of Government	General Provisions Bonds of certain officers required
VIRGINIA	VA. CODE ANN. §§ 2.2-1840, 1841	Administration of Government	Department of the Treasury Blanket surety bond plan for state and local employees
WASHINGTON	WASH. REV. CODE § 42.08.005, et seq.	Public Officers and Agencies	Official Bonds
WEST VIRGINIA	W. VA. CODE § 6-2-1, et seq.	General Provisions Respecting Officers	Official and Other Bonds
WISCONSIN	WIS. STAT. § 19.01, et seq.	General Duties Of Public Officials	Oaths and Official Bonds
WYOMING	WYO. STAT. ANN. § 9-1-102	Administration of the Government	State Officers – Generally

APPENDIX B

ISSUED BY: DD **POLICY NO: DD**

ISSUED TO: DD

PUBLIC EMPLOYEE DISHONESTY COVERAGE FORM
(COVERAGE FORM O–PER LOSS)

A. COVERAGE

We will pay loss of, and loss from damage to, Covered Property resulting directly from the Covered Cause of Loss.

1. **Covered Property:** "Money", "securities", and "property other than money and securities".
2. **Covered Cause of Loss:** "Employee dishonesty".
3. **Coverage Extension**

   Employees Temporarily Outside Coverage Territory: We will pay for loss caused by any "employee" while temporarily outside the territory specified in the Territory General Condition for a period not more than 90 days.

B. LIMIT OF INSURANCE

The most we will pay for loss in any one "occurrence" is the applicable Limit of Insurance shown in the DECLARATIONS.

C. DEDUCTIBLE

1. We will not pay for loss in any one "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the DECLARATIONS. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.
2. You must:
   a. Give us notice as soon as possible of any loss of the type insured under this Coverage Form even though it falls entirely within the Deductible Amount.
   b. Upon our request, give us a statement describing the loss.

D. ADDITIONAL EXCLUSIONS, CONDITIONS AND DEFINITIONS: In addition to the provisions in the Crime General Provisions, this Coverage Form is subject to the following:

1. **Additional Exclusions:** We will not pay for loss or damages as specified below:
   a. **Employee Cancelled Under Prior Insurance:** loss caused by any "employee" of yours, or predecessor in interest of yours, for whom similar prior insurance has been cancelled and not reinstated since the last such cancellation.
   b. **Inventory Shortages:** loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:
      (1) An inventory computation; or
      (2) A profit and loss computation.
   c. **Bonded Employee:** loss caused by any "employee" required by law to be individually bonded.
   d. **Treasurer or Tax Collector:** loss caused by a treasurer or tax collector by whatever name known.
   e. **Damages:** damages for which you are legally liable as a result of:
      (1) the deprivation or violation of the civil rights of any person by an "employee"; or
      (2) the tortious conduct of an "employee", except conversion of property of other parties held by you in any capacity.
2. **Additional Conditions:**
   a. **Cancellation As To Any Employee:**
      This insurance is cancelled as to any "employee":
      (1) Immediately upon discovery by you or any official or employee authorized to manage, govern or control your employees, of any dishonest act committed by that "employee" whether before or after becoming employed by you.
      (2) On the date specified in a notice mailed to you. That date will be at least 30 days after the date of mailing.

      The mailing of notice to you at the last mailing address known to us will be sufficient proof of notice. Delivery of notice is the same as mailing.
   b. **Sole Benefit:** This insurance is for your sole benefit. No legal proceeding of any kind to recover on account of loss under this coverage may be brought by anyone other than you.
   c. **Indemnification:** We will indemnify any of your officials who are required by law to give bonds for the faithful performance of their service against loss through dishonest acts of persons who serve under them, subject to the Limit of Insurance.
3. **Additional Definitions**
   a. **"Employee Dishonesty"** in paragraph A.2. means only dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons, with the manifest intent to:
      (1) Cause you to sustain loss; and also
      (2) Obtain financial benefit (other than employee benefits earned in the normal course of employment, including: salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions) for:
         (a) The "employee"; or
         (b) Any person or organization intended by the "employee" to receive that benefit.
   b. **"Occurrence"** means all loss caused by, or involving, one or more "employees", whether the result of a single act or series of acts.

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APPENDIX C

ISSUED BY: **POLICY NO:**

ISSUED TO:

PUBLIC EMPLOYEE DISHONESTY COVERAGE FORM
(COVERAGE FORM P-PER EMPLOYEE)

A. COVERAGE

We will pay for loss of, and loss from damage to, Covered Property resulting directly from the Covered Cause of Loss.

1. **Covered Property:** "Money", "securities", and "property other than money and securities".

2. **Covered Cause of Loss:** "Employee dishonesty".

3. **Coverage Extension**

   Employees Temporarily Outside Coverage Territory: We will pay for loss caused by any "employee" while temporarily outside the territory specified in the Territory General Condition for a period not more than 90 days.

B. LIMIT OF INSURANCE

The most we will pay for loss in any one "occurrence" is the applicable Limit of Insurance shown in the DECLARATIONS.

C. DEDUCTIBLE

1. We will not pay for loss in any one "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the DECLARATIONS. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

2. You must:

   a. Give us notice as soon as possible of any loss of the type insured under this Coverage Form even though falls entirely within the Deductible Amount.

   b. Upon our request, give us a statement describing the loss.

D. ADDITIONAL EXCLUSIONS, CONDITIONS AND DEFINITIONS: In addition to the provisions in the Crime General Provisions, this Coverage Form is subject to the following:

1. **Additional Exclusions:** We will not pay for loss or damages as specified below:

   a. **Employee Cancelled Under Prior Insurance:** loss caused by any "employee" of yours, or predecessor in interest of yours, for whom similar prior insurance has been cancelled and not reinstated since the last such cancellation.

   b. **Inventory Shortages:** loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

      (1) An inventory computation; or

      (2) A profit and loss computation.

   c. **Bonded Employee:** loss caused by any "employee" required by law to be individually bonded.

   d. **Treasurer or Tax Collector:** loss caused by a treasurer or tax collector by whatever name known.

   e. **Damages:** damages for which you are legally liable as a result of:

      (1) the deprivation or violation of the civil rights of any person by an "employee"; or

      (2) the tortious conduct of an "employee", except conversion of property of other parties held by you in any capacity.

2. **Additional Conditions:**

   a. **Cancellation As To Any Employee:** This insurance is cancelled as to any "employee":

      (1) Immediately upon discovery by you or any official or employee authorized to manage, govern or control your employees, of any dishonest act committed by that "employee" whether before or after becoming employed by you.

(2) On the date specified in a notice mailed to you. That date will be at least 30 days after the date of mailing.

The mailing of notice to you at the last mailing address known to us will be sufficient proof of notice. Delivery of notice is the same as mailing.

b. Sole Benefit: This insurance is for your sole benefit. No legal proceeding of any kind to recover on account of loss under this coverage may be brought by anyone other than you.

c. Indemnification: We will indemnify any of your officials who are required by law to give bonds for the faithful performance of their service against loss through dishonest acts of persons who serve under them, subject to the Limit of Insurance.

3. Additional Definitions:

a. "Employee Dishonesty" in paragraph A.2. means only dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons, with the manifest intent to:

(1) Cause you to sustain loss; and also

(2) Obtain financial benefit (other than employee benefits earned in the normal course of employment, including: salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions) for:

(a) The "employee"; or

(b) Any person or organization intended by the "employee" to receive that benefit.

b. "Occurrence" means all loss up to the Limit of Liability caused by each "employee", whether the result of a single act or series of acts.