1235

"POLICY OF BOND" ISSUED BY INSURANCE COMPANY OR SURETY COMPANY MUST MEET REQUIREMENTS OF §§4509.19, 4509.20, R.C.

SYLLABUS:

Under the provisions of division (A) of Section 4509.20, Revised Code, the "policiy or bond" referred to in paragraphs (5), (6), and (7) of division (A) of Section 4509.19, Revised Code, must (except as provided in division (B) of Section 4509.20, Revised Code) be issued by an insurance company or surety company authorized to do business in this state, and must comply with the monetary requirements of division (A) of Section 4509.20, Revised Code; and, under Section 4509.20, Revised Code, as amended effective July 1, 1960, such "policy or bond" will be required to meet the same requirements.

Columbus, Ohio, April 5, 1960

Hon. C. W. Ayers, Registrar
Bureau of Motor Vehicles, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"Your attention is hereby directed to the following sections of the Motorist Financial Responsibility Law:

"Section 4509.15, Revised Code: The security required under section 4509.12, of the Revised Code, shall be in the form of money, or bonds of the United States, or of this state, or a political subdivision of this state, at their par or face value, in such amount as the registrar of motor vehicles may require, but in no case in excess of the limits specified in section 4509.20 of the Revised Code.

"Section 4509.19 (A). The requirements as to security and suspension in sections 4509.12 and 4509.17, of the Revised Code, do not apply:

(7) To a driver or owner whose liability for damages resulting from the accident is, in the judgment of the registrar of motor vehicles, covered by any other form of liability insurance policy or bond;

"Section 4509.20 (A). A policy or bond does not comply with divisions (A) (5), (A) (6), and (A) (7) of section 4509.19 of the Revised Code unless issued by an insurance company or surety company authorized to do business in this state, except as provided in division (B) of this section, or unless such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than ten thousand dollars because of bodily injury to or death of two or more persons in one accident, and, if the accident has resulted in injury to, or destruction of property, to a limit of not less than five thousand dollars because of injury to or destruction of property of others in any one accident.

"I have received a request from a motorist subject to the provisions of the Financial Responsibility Law, Chapter 4509., to accept a corporate surety bond of a company authorized to do business in Ohio in the amount of the security deposit as required

by Section 4509.15, R.C. The security deposit reflects the amount which our evaluation sections determines the person might become liable for in the event of adverse litigation.

"We have always treated the above cited sections of the Revised Code as requiring a bond in the amount indicated by Section 4509.20 (A), R.C. We feel that the bond referred to in Section 4509.20 (A), R.C., is a bond which has been on file with the Registrar, having been filed by the individual either voluntarily or by reason of a requirement of the law.

The question simply stated, is whether the provisions of the law with reference to the form of the security deposit as contained in Section 4509.15, R.C., should be construed strictly or modified by the provisions of Section 4509.20 (A), R.C. to allow a corporate surety bond in the amount as evaluated by the Registrar."

I further understand from my discussion with you concerning this matter that the motorist in question was involved in an accident which made him subject to the Motorist Financial Responsibility Law and he insists that his acquisition of a surety bond from a surety bonding company, authorized to do business in Ohio, in the amount of damages which might be recovered against him, would be sufficient under Section 4509.19 (A) (7), Revised Code, to relieve him from operation of Sections 4509.12 and 4509.15, Revised Code.

Section 4509.12, *supra,* requires the posting of certain security; Section 4509.15, *supra,* as noted in your request, specifies the form of such security. As said Section 4509.15, Revised Code, refers only to money, bonds of the United States or of this state, and bonds of political subdivisions of this state, it is apparent that the security bond which the motorist wishes to submit does not comply with this section. It is necessary, therefore, to consider the effect and requirements of Sections 4509.19 (A) (7) and 4509.20, Revised Code, to see if the proposed security would qualify under the provisions therein.

Sections 4509.19, Revised Code, reads in part as follows:

"(A) The requirements as to security and suspension in sections 4509.12 and 4509.17 of the Revised Code do not apply:

"* * *

"(5) To the driver or owner if the owner had in effect at the time of the accident an automobile liability policy or bond with respect to the motor vehicle in the accident, except that a driver shall not be exempt under this division of this section if at

the time of the accident the motor vehicle was being operated without the owner's permission, express or implied;

"(6) To the driver, if not the owner of the motor vehicle vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy or bond with respect to his driving of motor vehicles not owned by him;

"(7) To a driver or owner whose liability for damages resulting from the accident is, in the judgment of the registrar of motor vehicles, covered by any other form of liability insurance policy or bond;

"* * *

The above cited section of the Revised Code indicates under what circumstances a person shall be excluded from the requirement of posting a deposit under Section 4509.12, Revised Code. Paragraph (A) (5) and paragraph (A) (6) of Section 4509.19, Revised Code, specifically cover situations wherein the driver or owner is covered by a liability policy or bond in effect at the time of the accident. Paragraph (A) (7) of Section 4509.19, Revised Code, deals with situations wherein the driver or owner is, in the judgment of the registrar, covered by any other form of liability insurance policy or bond, and presumably such coverage may be obtained after the accident occurred.

Section 4509.15, Revised Code, sets forth the form of the deposit required by Section 4509.12, Revised Code, and it is quite obvious that this section does not control if the person involved falls within any of the exceptions set forth in Section 4509.19, Revised Code.

Section 4509.20, Revised Code, specifically sets forth the requirements for a bond or liability policy as mentioned in Section 4509.19, Revised Code. Therefore, to properly determine whether a bond or policy is sufficient to exclude a person from the requirements of Section 4509.12, Revised Code, said Section 4509.20 should be analyzed. This section reads in part as follows:

"(A) A policy or bond does not comply with divisions (A) (5), (A) (6), and (A) (7) of section 4509.19 of the Revised Code unless issued by an insurance company or surety company authorized to do business in this state, except as provided in division (B) of this section, *or* unless such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than ten thousand dollars because of bodily injury to or death of one person

> in any one accident and, subject to said limit for one person, to a limit of not less than twenty thousand dollars because of bodily injury to or death of two or more persons in one accident, and, if the accident has resulted in injury to, or destruction of property, to a limit of not less than five thousand dollars because of injury to or destruction of property of others in any one accident.
>
> "* * * * * * * * *."
>
> (Emphasis added)

On first impression, Section 4509.20, *supra,* might be interpreted as allowing a policy or bond issued by an insurance company or surety company authorized to do business in this state to be considered to be in compliance with Section 4509.19 (A) (7), Revised Code, no matter what the monetary coverage of the policy or bond. This conclusion would result from interpreting the use of the word "or" in Section 4509.20 (A), *supra,* to mean that a policy or bond is in compliance if (1) it is issued by an insurance company or surety company authorized to do business in this state, except as provided in division (B) of said section, *or* if (2) it is subject to the monetary limitation prescribed by said section. Such an interpretation would allow a driver or owner, who was involved in an accident, to be relieved of the deposit required by Sections 4509.12 and 4509.15, Revised Code, provided he had or could acquire an insurance policy or bond issued by an insurance company or surety bonding company authorized to do business in Ohio, regardless of the policy limits and, in my opinion, would defeat the purpose of the Methodist Financial Responsibility Law. Moreover, a consideration of Chapter 4509., Revised Code, clearly indicates that such interpretation was not intended by the legislature in its enactment of such law.

Section 4509.20, Revised Code, was originally enacted as Section 6298-28, General Code, 124 Ohio Laws 563 (569) and read in part as follows:

> "(a) No policy or bond shall comply with section 6298-27 unless issued by an insurance company or surety company authorized to do business in this state, except as provided in subdivision (b) of this section, *nor* unless such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than $5000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than

> $10,000 because of bodily injury to or death of two or more persons in one accident, and, if the accident has resulted in injury to, or destruction of property, to a limit of not less than $5000 because of injury to or destruction of property of others in any one accident.
>
> "* * * * * * * * *."
>
> (Emphasis added)

You will note that the law as originally enacted used the word "nor" not "or" and that there was no doubt that the monetary requirements applied to all such policies or bonds. In 1953 this section was revised and renumbered as a part of the general code revision act, the section becoming Section 4509.20, Revised Code. In such revision the word "or" was substituted for "nor".

In revising the code it was the stated intention of the legislature that no substantive changes were to be made in the statutes. To make this clear, Section 1.24, Revised Code, was adopted, said section reading:

> "That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not as new enactments."

The probate court of Hamilton County, Ohio, in *Schuck v. Schuck,* 7 O. O. 2d. 199, in construing this provision in regards to a phrase which was changed by the new revision, held at page 201 of its decision:

> "When the One Hundredth General Assembly, 1953, enacted the Revised Code, which became effective on October 1, 1953, it specifically provided in R.C. Sec. 1.24 'that in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not as new enactments.'"

It is obvious, therefore, that the present enactment must be construed in the light of Section 1.24, Revised Code, and the word "or" appearing

in the first paragraph of Section 4509.20, Revised Code, after the phrase "as provided in division (B) of this section" must be read as "nor." This construction is not only proper in light of the above cited section of the Revised Code but also to follow the obvious intent of the legislature to establish a standard of limits for the bond and liability policies mentioned in this section. A complete analysis of Chapter 4509., Revised Code, and particularly Section 4509.45, Revised Code, which deals with financial responsibility required upon conviction of certain traffic offenses, shows the intent to maintain such a standard, and it would not appear that the legislature intended to require less stringent standards for those involved in a motor vehicle accident.

In view of the above, it is apparent that to comply with present Section 4509.19 (A) (7), Revised Code, the driver or owner must be covered by a liability policy with limits established by Section 4509.20 (A), Revised Code, as well as having a bond or policy issued by an insurance company or surety bonding company authorized to do business in Ohio. This, of course, answers your specific question but, in view of the fact that Amended Substitute House Bill No. 1035 of the 103rd General Assembly, effective July 1, 1960, amended Section 4509.20, Revised Code, by raising the limits from $5000 and $10,000 to $10,000 and $20,000 without correcting the error contained in Section 4509.20, Revised Code, we must consider what construction should be placed on the language as a result of the new amendment effective July 1, 1960.

The answer to this question seems to be well settled in Ohio law; that is, when a clerical mistake in one part of an act is so manifest that its change will defeat the plain object of the enactment and lead to absurd results and consequences, the court will properly substitute the correct word. This rule is clearly stated in 37 Ohio Jurisprudence 503, Statutes, Section 273, reading in part as follows:

> "The presence of a clerical mistake in one part of an act may be derived by necessary inference from another part. A legislative mistake in the terms of a statute is indicated where it appears beyond doubt that a statute, when read literally as printed, is impossible of execution, or will defeat the plain object of its enactment, or is senseless and inconsistent, or leads to absurd results or consequences. * * *"

The Supreme Court of Ohio in *Stanton v. Frankel Brothers Realty Co., et al.,* 117 Ohio St., 345, followed this rule by allowing the substitu-

tion of the word "or" for "of" because the otherwise obvious intent of the legislature as evidenced by the legislative history would have been defeated. The correction in the above cited case changed the meaning of the statute to the extent that it extended the right to a complainant to appeal the decision of the county board of revision.

The legislative history, the scheme established by Chapter 4509., Revised Code, and past construction of Section 4509.20, Revised Code, make it obvious that to construe this section, as amended, to mean that any insurance policy or bond, no matter what its limit, issued by an insurance company authorized to do business in Ohio, would relieve the person from the requirements of Section 4509.12, Revised Code, would completely destroy the intent and purpose of the law.

I am of the opinion, therefore, that Section 4509.20 (A), Revised Code, as presently existing and as of July 1, 1960, requires that the bond referred to in divisions (A) (7) of Section 4509.19, Revised Code, be issued by an insurance company or surety company authorized to do business in this state, and that the bond or liability policy comply with the limits established by said Section 4509.20, Revised Code.

Accordingly, it is my opinion and you are advised that under the provisions of division (A) of Section 4509.20, Revised Code, the "policy or bond" referred to in paragraphs (5), (6), and (7) of division (A) of Section 4509.19, Revised Code, must (except as provided in division (B) of Section 4509.20, Revised Code) be issued by an insurance company or surety company authorized to do business in this state, and must comply with the monetary requirements of division (A) of Section 4509.20, Revised Code; and, under said Section 4509.20, Revised Code, as amended effective July 1, 1960, such "policy or bond" will be required to meet the same requirements.

Respectfully,
MARK MCELROY
Attorney General