



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable D. C. Greer
State Highway Engineer
Austin, Texas

Dear Sir:

Opinion No. 0-4239
Re: Contractor's bond form.

We have your letter of November 21, 1941, which reads as follows:

"There is attached hereto a copy of our 'Contractor's Bond' form. It is our purpose to have this form reprinted in the near future, but before having this done there is one change that we propose to make, provided it meets with your approval.

"You will note that 'and shall have paid and discharged all liabilities for injuries which have been incurred in and about the said construction, under the operation of the Statutes of the State' has been omitted. We believe this proper, in line with the decision of the Supreme Court of Texas in the case 'H.B. Fidelity and Guaranty Company vs. Eubanks', 87 SW (2d) 248.

"It is also proposed to make the word 'material' read 'materials' in the line immediately above that which has been stricken from the attached form. We will appreciate any other comments you may desire to offer with respect to this proposed form.

"Your early advice will be appreciated."

You have requested that we advise you whether or not the provision "and shall have paid and discharged all liabilities for injuries which have been incurred in and about the said construction, under the operation of the Statutes of the State," should be deleted from the form of bond used by the Highway Department.

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It is the opinion of this department and you are therefore advised that the provisions of the bond above quoted in view of the decision by the Supreme Court of Texas in the case of U. Z. Fidelity and Guaranty Company v. Dubanks, 87 S. W. (2d) 248, serves no useful purpose and therefore should be deleted from future bond forms. We also approve the substitution of the word "materials" for the word "material" as suggested by your letter.

There is one other suggestion that we would like to make. While it is not essential we believe that better wording would be to substitute in the last line of the bond the word "effect" for the word "virtue."

Very truly yours

APPROVED DEC 11, 1947

ATTORNEY GENERAL OF TEXAS

Robert A. Wells

BY

Douglas E. Bergman
Douglas E. Bergman
Assistant

ATTORNEY GENERAL

DMB:db

APPROVED
OPINIC
COMMIT
BY *BA*
CHAIRMAN