



Bonding/Insurance Requirements for Municipal Officials

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Wisconsin law requires that certain municipal officers be covered by either a bond or a dishonesty insurance or other appropriate insurance policy. The purpose of requiring such bonds or insurance policies is to protect the municipality and its taxpayers against any loss of public funds that might occur if a public officer engages in wrongdoing and fails to faithfully perform the duties of his or her office. Although incidents of embezzlement or misuse of public funds by public officials may be uncommon, such incidents do occur and can be devastating. A recent documentary titled “All the Queen’s Horses,” details how the City of Dixon, Illinois’ appointed comptroller/treasurer embezzled \$53.7 million from the City over the course of 22 years. As public infrastructure deteriorated and the City repeatedly slashed its budget and incurred debt in its struggle to provide basic services, Rita Crundwell used the funds she stole from the City to build a championship horse breeding operation.

Questions concerning bonding/insurance requirements typically arise this time of year when new officials take office or are appointed following the spring elections. This month’s Comment reviews the law in light of recent changes made by 2017 Wis. Act 51 which simplify the law by giving municipalities discretion to require

bonds or obtain a dishonesty insurance policy or other appropriate insurance policy to cover such officials.

Which Municipal Officials Must be Bonded?

Various municipal officials are required by statute to file official bonds as a qualification for office or be covered under a blanket bond or dishonesty insurance policy obtained by the municipality. In cities the treasurer,¹ comptroller,² chief of police,³ municipal judge,⁴ and such other officers as the statutes or council may direct⁵ are subject to such requirements.

Although the statutes do not expressly require a bond or coverage for city clerks, such a bond is implied by Wis Stat. § 62.09(11)(i), which provides that if a deputy clerk is appointed by the clerk, “[t]he clerk and the clerk’s sureties shall be liable on the clerk’s official bond for the acts of such deputy.” This implication is further supported by § 19.01(4)(f) which provides that the oaths and bonds of city clerks shall be filed in the office of city treasurer. Whether mandatory or not, many cities direct the clerk to file an official bond and this appears to be the better procedure since clerks often handle municipal funds and property.

In villages an official bond or coverage is required by statute of the clerk,⁶

treasurer,⁷ marshal,⁸ constable⁹ and municipal judge.¹⁰ The acts of a deputy village treasurer are to be covered by an official bond as the village board shall direct.¹¹

The clerk or comptroller of municipalities that have adopted the alternative method of approving financial claims under § 66.0609 are required to be covered by a bond or insurance policy.¹² Also, utility commissions may provide that utility receipts be paid to a bonded cashier appointed by the commission who then must turn the receipts over to the municipal treasurer on a monthly basis.¹³

In general, the official acts of a deputy are covered by the principal’s bond. Section 19.01(3) provides in part that the duties mentioned in the oath and bond of public officials must include “the faithful performance by all persons appointed or employed by the officer either in his or her principal or subsidiary office, of their respective duties and trusts therein.” Thus, it would appear, for example, that the acts of an assistant clerk appointed by the clerk would be covered by the clerk’s bond.

It is doubtful that this is true when the deputy clerk is appointed or employed not by the clerk but by the governing body. If the duties of a deputy or

1. Wis. Stat. § 62.09(4)(b).

2. *Id.*

3. *Id.*

4. Wis. Stat. § 755.03(1).

5. Wis. Stat. § 62.09(4)(b).

6. Wis. Stat. § 61.25(1).

7. Wis. Stat. § 61.26(1).

8. Wis. Stat. § 61.28.

9. Wis. Stat. § 61.29(1)(a).

10. Wis. Stat. § 755.03(1).

11. Wis. Stat. § 61.261.

12. Wis. Stat. § 66.0609(4).

13. Wis. Stat. § 66.0805(4).

employee appointed by the governing body indicate a need for a bond, the governing body may require that a bond be provided.

When additional duties are imposed upon a bonded official, such duties are covered by the official's bond.¹⁴ Under such a rule, a municipal clerk's bond would cover additional duties such as acting as comptroller or cashier for a municipal utility. However, if the imposition of new duties constitutes an attempt to create a new office for the official, the official's original bond does not cover the new office.¹⁵

Municipal governing bodies may by local ordinance require that other officials and employees file bonds. The governing

body may also at any time require new and additional bonds of any officer.¹⁶ The most economical policy is to require bonds from or insure those officials or employees who handle public money or valuable property which is easily converted into money.

Form of Bond

The form of an official bond required of any public official is set forth in § 19.01(2). Although only substantial compliance with the statutory form is required, every official bond must contain an agreement by the principal (municipal official) and the surety that the officer will faithfully discharge the duties of the office according to law, and will pay to the entitled parties such damages, not

exceeding a specific amount, as may be suffered by them in consequence of the officer's failure to discharge the duties of the office.¹⁷ Such duties include the performance to the best of the officer's ability of every official act required and the nonperformance of every act forbidden by law to be performed by the officer.¹⁸ The latter would include such acts as the disbursement of funds for unauthorized purposes and the improper conversion of municipal property.

According to the statutes, any bond given as an official bond by a public officer is deemed to contain all the conditions and provisions required by § 19.01(2), regardless of the bond's form or wording.¹⁹

14. *City of Rice Lake v. Jensen*, 216 Wis. 1, 255 N.W. 130 (1934).
 15. *City of Milwaukee v. U.S. Fidelity & Guaranty Co.*, 144 Wis. 603, 129 N.W. 786 (1911).
 16. Wis. Stat. §§ 61.22 and 62.09(4)(b).
 17. Wis. Stat. § 19.01(2).
 18. Wis. Stat. § 19.01(3).
 19. Wis. Stat. § 19.01(2m).

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When Must a Bond Be Filed?

Where public official bonds are required, the bond is usually a prerequisite to the assumption of office. Failure of a municipal official to execute a required bond within the time prescribed by law creates a vacancy in that office.²⁰ The official bonds of city officers must be approved by the mayor and, when so approved, must be filed within ten days after the officer has been notified of his or her election or appointment.²¹ In first class cities (Milwaukee), if an office or position involves fiduciary responsibility or the handling of money, the appointing officer may require the appointee to furnish a bond or other security to the officer and the city.²²

The official bonds of village officials must be approved by the village president.²³ The village clerk, treasurer, and constable are required to file an official bond at the same time they take their oath of office, which must be done within five days after receiving notice of election or appointment to office.²⁴

The only time limit for the filing of bonds by other municipal officials who are not required to take an official oath appears to be in § 19.01(5), which provides that every official required to file a bond shall do so before entering upon the duties of the office.

Local officials should bear in mind that a new bond is required for each term of office. Thus, incumbents who are reelected or reappointed must renew their bonds within the prescribed time periods. Also, bonds continue in force until the

officer's successor is duly qualified and installed.²⁵

Where are Bonds to be Filed?

Official bonds executed by city officers must be filed in the office of the city clerk. If the city clerk is required by the common council to file a bond, the clerk must file the bond in the office of city treasurer.²⁶ Similarly, official bonds executed by village officers must be filed in the office of the village clerk, except the village clerk is required to file in the office of village treasurer.²⁷ In first class cities, after the common council has approved the bonds, the clerk delivers the bonds to the city comptroller who has them recorded in the office of the register of deeds. The comptroller then files them in the clerk's office; a duplicate copy is filed in the comptroller's office.²⁸

The Blanket Bond

Municipalities may obtain blanket bonds which provide coverage against losses resulting from failure of officials or employees to perform faithfully or to account properly for all monies or property received by virtue of their office or employment.²⁹ All officers and subordinates who are not required by law to furnish individual bonds in order to qualify for office are eligible to be covered by a blanket bond.

Amount of Bond Coverage

The amount of an official bond, unless prescribed by statute, is determined by the city council or village board, and is subject to the approval of the mayor or village president.³⁰ In first class cities, the amount of a bond required

by an appointing officer is fixed by the appointing officer with the mayor's approval.³¹ In most cases the statutes are silent as to the amount of a bond. For municipalities that have adopted the alternative method of approving financial claims under § 66.0609, the amount of the bond of the clerk or comptroller is specified in sub. (4).³² Also, the amount of the treasurer's bond required by § 70.67(1) (discussed below) is specified in that statute.

Varying local conditions prevent the establishment of a fixed formula for determining the amount of the bond for various officials. However, certain influential factors may be pointed out. The amount of the bond should be commensurate with the financial responsibility of the position. This may best be determined by the local finance officer and/or municipal attorney. In determining the amount of coverage needed, the largest amount of money on hand at any one time is a more significant factor than the total amount handled by an official during the entire year. Also, the frequency and effectiveness of audits are important factors in determining the amount of a bond.

Municipalities may want to consult with responsible surety companies on the issue of minimum bond requirements.

MUNICIPAL TREASURER'S BOND

In addition to the official bond required of every city and village treasurer pursuant to §§ 61.26 and 62.09(4)(b), § 70.67(1) requires that municipal treasurers execute and deliver to the

20. Wis. Stat. § 17.03(7).

21. Wis. Stat. § 62.09(4)(b).

22. Wis. Stat. § 62.55.

23. Wis. Stat. § 61.22.

24. Wis. Stat. §§ 61.21 and 19.01(5).

25. Wis. Stat. § 19.01(6).

26. Wis. Stat. § 19.01(4)(f).

27. Wis. Stat. § 19.01(4)(g).

28. Wis. Stat. § 62.55.

29. Wis. Stat. §§ 19.07(1), 61.22 and 62.09(4)(b).

30. Wis. Stat. §§ 61.22 and 62.09(4)(b).

31. Wis. Stat. § 62.55.

32. The alternative system of approving financial claims that can be adopted by municipalities under § 66.0609 is only operative if the comptroller or clerk is covered by a fidelity bond of not less than \$5,000 in villages and 4th class cities, of not less than \$10,000 in 3rd class cities, and of not less than \$20,000 in 2nd class cities.

county treasurer a bond to be approved by the county treasurer, conditioned for the faithful performance of the duties of the office and, more specifically, that the treasurer will account for and pay over all taxes of any kind which are required to be paid to the county treasurer. The bond must be no less than the amount of state and county taxes apportioned to the village or city.

The duplicate treasurer's bond required by § 70.67(1) need not be given to the county if the municipal governing body adopts an ordinance obligating the municipality to pay, in case the treasurer fails to, all taxes required by law to be paid by the municipal treasurer to the county treasurer.³³ A certified copy of the ordinance must be filed with the county treasurer. Such an ordinance remains in effect until a certified copy of its repeal by the municipal governing body is filed with the county clerk and treasurer.

Any governing body that has adopted such an ordinance may demand from the treasurer, in addition to the official bond required of all municipal treasurers, a fidelity or surety bond in an amount and upon such terms as may be determined by the governing body. Such an additional bond must be delivered to the municipal clerk.³⁴

Payment of Bond Premiums

In first class cities, where bonds are required by appointing officers pursuant to § 62.55, the premium for the bond is paid out of the city treasury. For other cities and villages, the law authorizes but does not appear to require the municipality to pay the cost of the public official bond of any officer.³⁵ In cities,³⁶ unless forbidden by law or unless other means of payment are provided for, the premium for the bond shall be charged to the fund appropriated and set up in the budget for the department, board, commission or other body whose officer is required by law to file a bond.³⁷ The

surety company furnishing the bond must be licensed and the cost of the bond may not exceed the current premium per year on the amount of the bond or obligation executed by the surety.³⁸

Statute of Limitations

An action by any municipality to recover a sum of money by reason of the breach of an official bond given by a public officer or employee of the municipality must be commenced within three years after the municipality learns that a default has occurred in some of the conditions of the bond and that it was damaged because of the default. After that, the action is barred.³⁹

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33. Wis. Stat. § 70.67(2).

34. *Id.*

35. Wis. Stat. § 19.01(8).

36. The provision referenced in this statute used to be found in § 66.14 which applied to municipalities generally. When chapter 66 was reorganized and modernized in 1999, § 66.14 was renumbered as § 62.09(4)(b) which makes it applicable to cities.

37. Wis. Stat. § 62.09(4)(d).

38. *Id.*

39. Wis. Stat. § 893.90(1).



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