

KDLA January 2011 Trustee Tip of the Month Do Trustees Have to Be Bonded?

Quick Tips

- ◆ Only the Board Treasurer must be bonded.
- ◆ The amount of the bond is determined by each Library Board.
- ◆ A guideline for setting the amount of the bond may be the amounts used for School Districts by the KY Education Cabinet. (see below)
- ◆ Errors and Omissions [or D&O] insurance does not replace the bonding requirement for the Treasurer.
- ◆ The Treasurer must be bonded before beginning to handle the duties of this office.

While all Library Board Trustees have the fiduciary responsibility to manage library income to best serve the community, only the Board Treasurer must be bonded. This requirement is provided for in both statute and in the state constitution.

The Constitution of Kentucky provides for the bonding of certain officers:

The Judges of the County Courts, Clerks, Sheriffs, Surveyors, Coroners, Jailers, Constables, and such other officers as the General Assembly may, from time to time, require, shall before they enter upon the duties of their respective offices, and as often thereafter as may be deemed proper, give such bond and security as may be prescribed by law. [§ 103]

And:

The General Assembly shall provide by a general law what officers shall execute bond for the faithful discharge of their duties, and fix the liability therein. [§ 224]

Statutorily, KRS 62.050(1) provides that:

No officer required by law to give bond shall enter upon the duties of his office until he gives the bond.

The Attorney General opines in OAG 95-003

... that a public officer is required to post a bond in relation to the performance of the duties of an office if a statute has been passed so providing.

Specific statutes directly address this issue for Library Boards provide that the Treasurer is required to give bond in an amount approved by the Board. [KRS 173.360(2); KRS 173.540(5); KRS 173.755(5)]

There is no statutory amount for the bond. Below are the guidelines from the Kentucky Education Cabinet for school districts - these guidelines may be considered by Library Boards as an optional guide (on next page).



Serving Kentucky's Need to Know

REVISED EXPOSURE SCHEDULE

EXPOSURE FACTOR	MINIMUM AMOUNT OF BOND
Up to \$25,000	\$2,500
\$25,001 to \$125,000	\$25,000
\$125,001 to \$400,000	\$50,000
\$400,001 to \$1,000,000	\$100,000
\$1,000,001 to \$2,000,000	\$150,000
\$2,000,001 to \$4,000,000	\$200,000
\$4,000,001 to \$6,000,000	\$300,000
\$6,000,001 to \$10,000,000	\$400,000
\$10,000,001 to \$15,000,000	\$600,000
\$15,000,001 to \$25,000,000	\$800,000
\$25,000,001 to \$75,000,000	\$1,000,000
\$75,000,001 to \$175,000,000	\$1,500,000
\$175,000,001 to \$500,000,000	\$2,000,000
\$500,000,001 to \$1,000,000,000	\$3,000,000
\$1,000,000,001 to \$1,500,000,000	\$4,000,000

(SBE 21.080; 1 Ky.R. 70; eff. 11-13-1974; Am. 1552; eff. 12-9-1990; 28 Ky.R. 1690; 2028; eff. 3-18-2002; 35 Ky.R. 635; 1461; eff. 1-5-2009.) – Taken from 702 KAR 3:080. Treasurer's bond.

The Board may want to include a statement in the bylaws that indicates: “The Library adopts the bonding schedule according to the chart as shown in 702 KAR 3:080.”

Regarding *Errors & Omissions*, or *Directors & Officers*, the AG has opined in OAG 66-49 that this insurance is not the same thing as the bond and does not relieve the library from having the treasurer bonded.

At this point we must note the difference between a “Bond” and “Insurance.” A bond merely guarantees the oblige that the obligor will truly and faithfully perform the obligation. It is for the benefit of the oblige. It does not in any way relieve the obligor of his personal responsibility for his erroneous acts or acts which he should have, but failed to perform. If the obligor (or principal) fails in his duty and does not make personal restitution, his surety can be called upon, by the oblige, to do so. This still does not relieve him of his personal responsibility since he is obligated to reimburse his surety for the amount which they are required to pay on his behalf. On the other hand, an “Errors and Omissions” insurance policy is for the benefit of the policyholder to guarantee him against personal loss because of this erroneous act or failure to act. We recognize that his guarantee is not absolute since policies do contain exclusions and many have a deductible clause. The end result however is to materially reduce the chance for personal loss to the named insured.

This is not legal advice and I am not an attorney. If you feel you need legal advice you should consult an attorney.

Terry L. Manuel
 Branch Manager, Program Development
 Kentucky Department for Libraries & Archives
 For more information, contact: Terry.Manuel@ky.gov or 502-564-8300 ext. 269

All *Trustee Tips of the Month* are available at: <http://kdl.ky.gov/libsupport/trustee.htm>.