By Bill Petro

Findings for Recovery: Understanding Your Coverage is Critical

There has been a lot of talk, confusion, and agonizing over developments across the state regarding recent findings for recovery (FFR). A 2016 case even resulted in the resignation of the treasurer. When situations such as these occur, many questions quickly follow.

Why is the treasurer responsible when someone else stole the money?

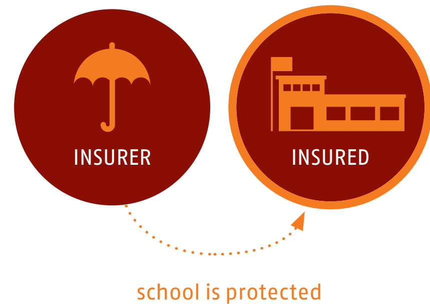
Why would anyone want to be a treasurer if they are responsible for reimbursing the bonding company when a finding for recovery is made?

Why won't other insurance coverages protect the treasurer in this situation?

In order to answer these questions, a refresher on property and casualty insurance and treasurer bonds is necessary. Please note this is a general discussion. We could write volumes on the details and intricacies involved, but for the purpose of this discussion—and to give OASBO members a better understanding of the topic—we intend to keep it high-level.

Insurance

A two-party contract whereby one party (insurer) promises to protect the other party (the insured) against loss or damage. The insured (school) is made whole or defended by the insurer.

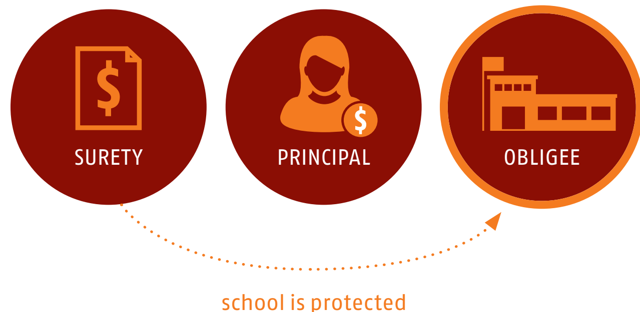


Surety Bond

A three-party agreement which legally binds a principal (treasurer) who needs the bond, an obligee (school/state) who requires the bond, and a surety, who financially guarantees the treasurer's tasks will be performed.

Surety Bonds provide protection for the obligee (school), *not* the principal (treasurer). The treasurer is not protected by the bond. The school, state, and public funds are protected.

Simply put, "Treasurer Bonds" guarantee the treasurer will act in accordance with the bond: the bond guarantees the treasurer's tasks.



Three Buckets

A good way to understand all of the moving parts is to use a "bucket" analogy. The buckets are specifically designed and developed to fill a particular need—and only that need—without overlapping.

The Property Bucket

First-party coverage is for the district's property such as buildings, contents, and damage to autos. This bucket also contains Employee Theft Coverage to protect school funds. It covers all employees – but excludes bonded employees. (See Bucket Three—Treasurer Bonds).

Example:
The state issues a finding for recovery solely against an accounts receivable clerk and not the treasurer. The district could look to their Employee Theft Coverage which is designed to cover theft and fraud of employees that are not bonded. The insurance company would pay this claim for theft by an employee not bonded; up to available limits.

The Casualty Bucket

Third-party coverage addresses situations where the district or district employees injure or damage other parties. These include slip and fall injuries to a visitor, free appropriate public education (FAPE) claims, bodily injury from an auto accident, or civil rights claims against the district.

Example:
If an accounts receivable clerk steals from the school, the school is damaged, not a third-party. Thus, the casualty forms do not apply. You may ask "Isn't the failure to properly account or oversee an employee, a 'wrongful act' and thus covered under the Wrongful Act form?" No. The Wrongful Act form covers situations where the district may have damaged other parties. In this situation, the district is damaged by the treasurer's acts or inaction. Thus the need for Bucket Three—Treasurer Bonds.

The Treasurer Bond Bucket

Surety Bonds (Treasurer Bonds, Contractors Bonds) are not insurance. The Treasurer Bond protects the district by guaranteeing the treasurer's performance. It does not protect the treasurer when an FFR is issued by the state against the treasurer or other individuals.

Example:
If an accounts receivable clerk steals from the school, the state issues an FFR against the clerk and treasurer. Bucket One—Employee Theft Coverage—will respond to the clerk's FFR, and Bucket Three, the Treasurer's Bond, and will respond to the treasurer's FFR.

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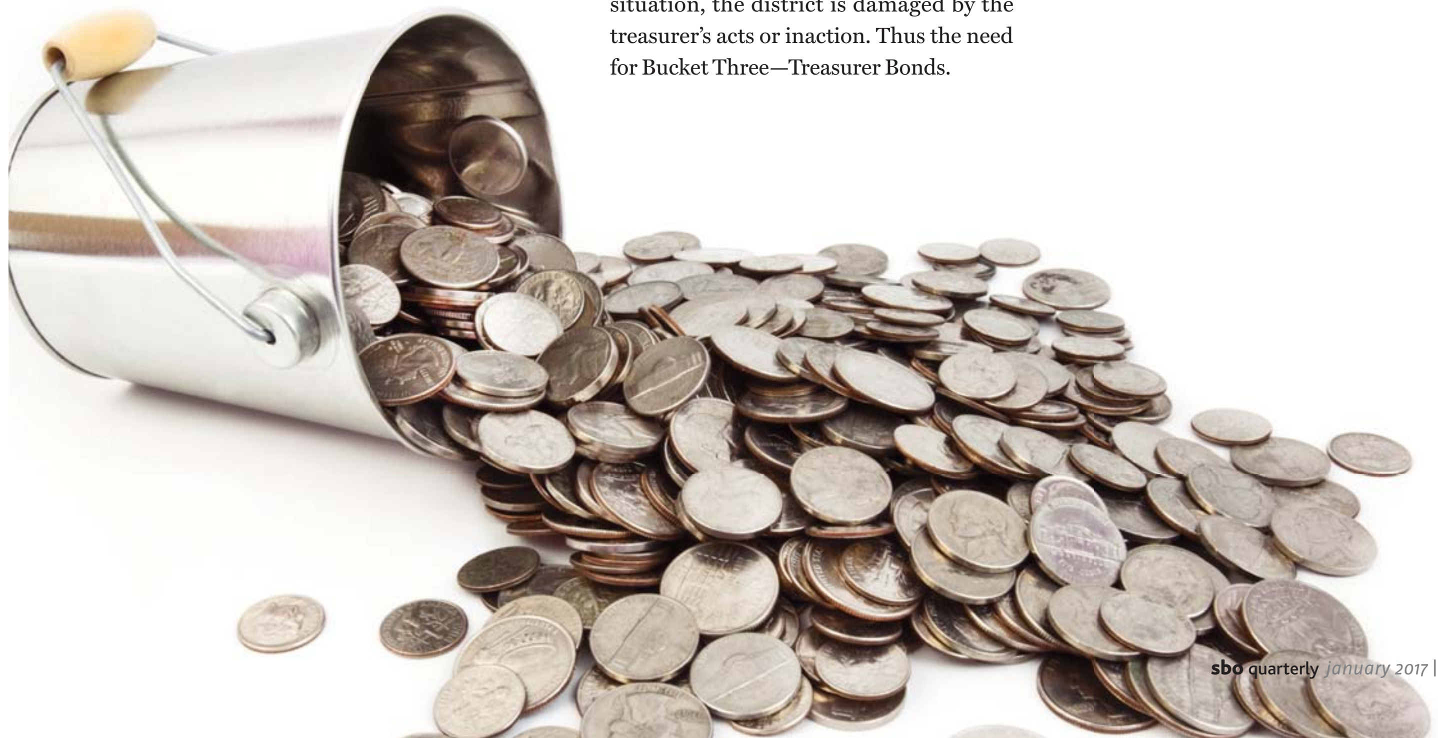

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Several questions arise out of these scenarios. Why are findings for recovery always issued against individuals? The treasurer is expected to reimburse 1) the school directly or 2) the Surety who makes payment on the FFR, but why?

The multiple cases highlighted below show the state has made it clear that they want someone to be personally responsible for public funds should they become missing.

Seward vs. Surety Company, 120 o. S., 47 (1929)

> *"...it would be distinctly against public policy not to require a public officer to account for... moneys that have come into his hands...; that it would open the door very wide for the accomplishment of the grossest frauds if public officers were permitted to present as the defense ...that it has been purloined or destroyed..."*

City of Youngstown vs Hindman, 66 Ohio App. 337 (1939)

> *"...public officers...having control over public funds will be held personally liable for missing public finds."*
>
> *"...under color of office, the public officer will be held personally liable for the missing funds, even if the loss occurred while the funds were, at the direction of the officer, in the custody of another individual."*

Ohio Revised Code 9.39

> *"All public officials are liable for all public money received or* collected by them or by their subordinates under color of office."

Attorney General Opinion, 80-074 (1980)

> *"Public officials controlling public funds or property are liable for* the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen..."

There are products on the market that protect the treasurer in the scenarios cited above. In fact, Ohio School Plan (OSP) offers such product.

Employee Theft Coverage

OSP offfers a form that adds back coverage for the treasurer. The form will indemnify the treasurer if personally liable for the theft or faithful performance of employees who serve under them. This is an additional added coverage for the treasurer.

Example:

The state issues a FFR solely against an accounts receivable clerk for theft. The Employee Theft coverage picks up the thefts by employees not bonded; up to available limits.

Example:

The state issues a FFR against an accounts receivable clerk and treasurer for the credit card theft by the clerk. Employee Theft Coverage picks up the theft by clerk and indemnifies the treasurer for FFR against treasurer up to available limits.

The bad news is that, ultimately, the treasurer is responsible for the loss of money either directly or by reimbursing the surety.

The good news is that products like those offered by OSP's Theft coverage indemnifies the treasurer if found personally liable for a theft or lack of faithful performance by employees who serve under them, up to available limits.

It is important to have mechanisms in place to protect schools and the public from theft of public funds. Additionally, it is critical that district leadership—including the treasurer—understand the difference between the coverages designed to protect the district, the public, and the individual, and how each are used. It is crucial to understand how these coverages respond as this is the basis for determining how large of a bucket each district needs to protect themselves and their employees.

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