



National Association of Surety Bond Producers

1140 19th Street, NW. Suite 800. Washington, DC 20036-5104

Phone: (202)686-3700

Fax: (202)686-3656

Web Site: <http://www.nasbp.org>

E-mail: info@nasbp.org

August 23, 2011

David Allen Miley, Assistant General Counsel
Oklahoma Department of Transportation
Construction Division
200 N.E. 21st Street
Oklahoma City, OK 73105-3204

Dear Mr. Miley:

Thank you for your letter of August 18, 2011, responding to my inquiry about the practices of the Oklahoma Department of Transportation in requiring surety bonds to bear only Oklahoma resident agent countersignatures. Enclosed is a copy of an email sent to you on August 9, 2011 that forwarded recent federal trial and appellate court decisions addressing the constitutionality of various state statutes that required resident agent countersignatures only. These federal decisions convey that such statutes violate the rights afforded to licensed nonresident agents under the Privileges and Immunities Clause of the U.S. Constitution.

Such legal actions were not needed in many states as their legislatures repealed such discriminatory statutes in recent decades. For example, the legislature of West Virginia amended W. Va. Code §33-12-11 to remove a countersignature requirement for insurance contracts executed after December 31, 2004. Almost all other states that had similar requirements have repealed them. These legislative actions demonstrate clearly that such requirements no longer serve useful purposes.

As you point out, Oklahoma does not have such a statute. You relate that the practice in question stems from the policy of ODOT to require bonds to be countersigned by Oklahoma resident insurance agents in order to satisfy a standardized contract specification. You further intimate that the contract specification is for the purpose of ensuring "the maximum effectiveness of the bond for the protection of the State by the local agent's countersignature." How does such a requirement accomplish this objective? How is a bond more effective when it is countersigned by a licensed resident agent instead of by a licensed nonresident agent? A valid license to write insurance in the State of Oklahoma should be the requirement, not the place of residence of the producer.

NASBP would be happy to furnish any further information which you may find helpful in your deliberations on this matter. Thank you for your prompt review.

Sincerely,

Mark H. McCallum
CEO

encl.