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The Honorable John Cornyn
Attorney General of Texas
Office of the Attorney General
Attn: Opinion Committee
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OPINION COMMITTEE

RQ-0317-JC

FILE # ML-41769-00

I.D. # 41769

Re: Request for an opinion on the interpretation of certain deleted statutory provisions resulting from the codification of former Art. 2372p-3., titled "Licensing and Regulation of Bail Bondsmen," into Chapter 1704 of the Texas Occupations Code.

Dear Attorney General Cornyn:

The Bexar County Bail Bond Board (BCBBB) has asked this office to forward to you for opinion certain questions it has pertaining to deleted provisions of former Art. 2372p-3, titled "Licensing and Regulation of Bail Bondsmen," resulting from its codification into Chapter 1704 of the Texas Occupations Code. Specifically, the BCBBB asks whether, as a result of this codification, there is still any statutory basis for considering an individual bondsman's independent appraisals of real property executed in trust to the Board for the purpose of determining property value? And if not, is a County Bail Bond Board now required to use the taxing unit's valuation as submitted by an applicant under §1704.155(2) of the Occupations Code for the purpose of determining real property values in setting bond limits?

Brief

The 1999 codification of Article 2372p-3 (now repealed) into Chapter 1704 of the Texas Occupations Code, appears to have created a significant change in the authority of a County Bail Bond Board to consider independent appraisals of property from bondsmen for the purpose of determining their limit for executing bonds. As a result of this codification, Chapter 1704 now omits the provision formerly found in Article 2372p-3 at Sec. 6(f)(2) permitting a bondsman to submit an independent appraisal of property executed in trust to the Board. It appears that a County Bail Bond Board may now only consider the appraisal received from the County's Appraisal District for the purpose of determining real property value in setting the bond limit of a licensee.

Several Texas Appellate Opinions and Opinions of the Texas Attorney General have concluded that under former Article 2372p-3, a Bail Bond Board had no authority to consider a tax appraisal¹ or to even provide its own independent appraisal of property in determining a bondsman's bail bond limit.² The appraisal submitted by a bondsman under Section 6(f)(2) after approval of his application for license was held to be the sole basis for determining value by a Bail Bond Board.³ Although an applicant was to provide a tax appraisal for property intended to be executed in trust to the Bail Bond Board with his application for license under Sec. 6 (a)(4)(B), the tax appraisal was not to be considered as evidence of the value of the property for determining the bondsman's bail bond limit.⁴

When Article 2372p-3 (now repealed) was codified into Chapter 1703 of the Texas Occupations Code there was a significant omission. Under the new §1703.154 (b)(3)(A) an applicant is still required to provide tax appraisals for all property intended to be executed in trust, but **after conditional approval of the application, §1704.160 does not permit the applicant to submit an independent appraisal.**⁵ He is simply required to execute in trust each deed to property listed in his application.⁶ The provision of former Sec. 6 (f)(2) allowing the applicant to also submit an independent appraisal was omitted. A well-settled rule of statutory construction dictates that every word excluded from a statute must be presumed to have been excluded for a purpose.⁷ The deletion of a

¹ See *Dallas County Bail Bond Board v. Black*, 833 S.W.2d 247 (Tex.App.—Dallas 1992, no writ) (*Black I*).

² See *Walstad d/b/a Immediate Bail Bonds v. Dallas County Bail Bond Board*, 996 S.W.2d 314 (Tex.App.—Dallas 1999, no writ); See also *Tex Atty. Gen. Op.* DM-264 (1993).

³ See *Tex Atty. Gen. Ltr. Op.* 97-102.

⁴ See *Dallas County Bail Bond Board v. Black*, 833 S.W.2d 247 (Tex.App.—Dallas 1992, no writ) (*Black I*); see also *Article 2372p-3, Sec.6(a)(4)(A) &(B) (Vernon Supp.1999)(now repealed)* (which required an applicant to provide the following:

A statement listing any nonexempt real estate owned by the applicant that the applicant intends to convey in trust to the board to secure payment of any obligations incurred by the applicant in the bonding business if the license is granted. The following shall be included for each parcel listed:

- (A) a legal description equivalent to the description required to convey the property by general warranty deed;
- (B) current statements from each taxing unit with power to assess or collect taxes against the property indicating that there are no outstanding tax liens against the property and indicating the net value of the property according to the current appraisal made by a real estate appraiser who is a member in good standing of a nationally recognized professional appraiser society or trade organization that has an established code of ethics, educational program, and professional certification program, accompanied by a statement from the applicant agreeing to deep all taxes paid on the property while it remains in trust.

This language has been carried over into the codified statutes of the Texas Occupations Code at § 1704.154 (b)(3)(A) and § 1704.155 (2)(A) & (B). Although the applicant is to provide "a current statement *from each taxing unit* authorized to impose taxes on the property showing the net value of the property according to a current appraisal . . ." [emphasis added], §6.01 of the Texas Property Tax Code provides that the Appraisal District for each County is in fact responsible for appraising property for each taxing unit that imposes ad valorem taxes on property within the boundaries of the district. An applicant for a bail bond license is, therefore, actually required to obtain his tax appraisal from the applicable Appraisal District.)

⁵ See *1703.160(a)(B), Tex. Occupations Code (Texas Codes Annotated 1999)*.

⁶ *Id.*

⁷ See *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981).

statutory requirement from its original version generally shows a clear legislative intent not to impose the requirement.⁸

In determining the Bail Bond limit, §1704.203 now provides that the determination is based upon the values of the property held in trust as submitted under §1704.160. As mentioned previously, §1704.160 simply requires the property listed on the application under §1704.154(b)(3)(A) to be executed in trust to the board upon its conditional approval. Because §1704.155 requires the real property list provided by the applicant under §1704.154(b)(3)(A) to be accompanied by a statement of its tax value, the tax value is now the only evidence of value before the Board in calculating a Bondsman's Bail Bond limit under §1704.203. In exercising its legal authority, a Bail Bond Board has only the power the legislature gives it.⁹ Under the new codification of former Article 2372p-3, there is no longer any authority for the Board to use a bondsman's independent appraisal or any valuation of a bondsman's property other than its tax value.

The legislative omission of language permitting a bondsman to submit independent appraisals now harmonizes other provisions within the codified bail bond statutes. For example, if an applicant for a bond license or a current license holder has evidence that the County's Appraisal District has undervalued his property, he may request a reappraisal from the Appraisal District.¹⁰ The Bail Bond Board may likewise request a reappraisal presumably to reduce an overvaluation.¹¹ The important point of these provisions is that they now highlight the relevance of accurately determining the taxable value of property executed in trust to the Bail Bond Board. It is the taxable value of property that is the basis for calculating a bondsman's bail bond limit.

Despite the legislative omission of former Sec. 6 (f)(2) in the Occupations Code, allowing the applicant to submit an independent appraisal, some may question whether Sec. 6 (f)(2) has in fact survived. The same legislature that codified Art. 2372p-3 also amended former Sections 6(g) and (h) and added Sections 6 (i) through (k) to Art 2372p-3 without reference to the repeal of this Article resulting from the codification. The Code Construction Act at §311.031 (C) of the Government Code, provides that,

The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature that enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

⁸ See *Lee v. Mitchell*, 23 S.W. 3d 209 (deletion of licensure requirement from original version of a bill shows a clear legislative intent not to impose the requirement.); See also *Transportation Ins. Co. v. Maksyn*, 580 S.W.2d 334, 338 (Tex. 1979) (deletion of a provision in a pending bill discloses legislative intent to reject the proposal.).

⁹ See *State v. Jackson*, 376 S.W.2d 341, 344 (Tex.1964); *Black d/b/a/ Allied Bonding Agency v. Dallas County Bail Bond Board*, 882 S.W.2d 434, (Tex.App.—Dallas 1994, no writ) (*Black II*); Cf. *Dallas County Bail Bond Board v. Stein*, 771 S.W.2d 577, 580 (Tex.App.—Dallas 1989, writ denied).

¹⁰ See §1704.156(b), *Tex. Occupations Code (Texas Codes Annotated 1999)*.

¹¹ *Id.*

Within the text of the amended Sec. 6 (h) are new limitations on the calculation of the bond limit based upon the number of years a bondsman has held a license.¹² So for example, Sec. 6 (h) now provides that a bondsman licensed after September 1, 1999, and who

has been licensed for fewer than 2 years or has had a license suspended or revoked may not execute bail bonds that in the aggregate exceed 10 times the value of property held as security under Subsection (f)(1) of this section plus five times the value of property *held in trust under Subsection (f)(2) of this section.* [emphasis added]¹³

Despite the reference to subsection (f)(2) in this amendment, there appears to be no basis for interpreting the reference to require that property executed in trust to the board under subsection (f)(2) is to be valued based upon an independent appraisal submitted by the bondsman after conditional approval of his license. A plain reading of the amendment to Sec. 6 (h) indicates it is intended only to provide a new basis for determining the upper bond limit for bondsman licensed for various periods of time.¹⁴ Under the amended language the upper bond limit is no longer calculated automatically as 10 times value, but is now 5, 6, 8 or 10 times the value depending on the number of years the bondsman has been licensed.¹⁵ The reference to (f)(2) in the context of this amendment simply identifies the appropriate calculation for bondsmen who pledge real property as opposed to cash as security under Subsection (f)(1). If a bondsman is pledging cash as security *under (f)(1)*, then he is still entitled to calculate his upper bond limit by multiplying his cash pledge amount by 10. But if the bondsman is pledging real property as security *under (f)(2)*, then the calculation is made by multiplying by a number less than 10 if the bondsman has been licensed less than 6 years – for a bondsman licensed less than 2 years the multiplier is 5, as described above; for bondsman licensed more than 2 but less than 4 years the multiplier is 6; for a bondsman licensed more than 4 but less than 6 years the multiplier is 8; and for bondsman licensed more than 6 years the multiplier is 10.¹⁶ In this context, the references to either (f)(1) or (f)(2) are provided merely for the purpose of identifying a licensee who pledges cash from one who pledges real property. To read into the amendment to Sec. 6(h) the entire provision of former subsection (f)(2), permitting a bondsman to submit an independent appraisal of his real property for the purpose of determining its value, adds much more to the amendment than it was intended to convey by a plain reading of its language.¹⁷

¹² See §1704.203, *Tex. Occupations Code (Texas Codes Annotated 1999)* (italicized material following text of section, including Section 1 of Acts 1999, 76th Leg., ch. 1096, eff. Sept. 1, 1999, which amends §6(g) and (h) of Vernon's Ann. Civ. St. art. 2372p-3[now this section] without reference to the repeal of said article by Acts 1999, 76th Leg., ch. 388, §6(a)).

¹³ *Id.*

¹⁴ See *Monsanto Co. v. Cornerstones Mun. Util. Dist.*, 865 S.W.2d 937,939 (Tex 1993) (If the statutory language is unambiguous, legislative intent is determined from the plain and common meaning of the words of the statute).

¹⁵ See §1704.203, *Tex. Occupations Code (Texas Codes Annotated 1999)* (italicized material following text of section including Section 1 of Acts 1999, 76th Leg., ch. 1096, eff. Sept. 1, 1999, which amends §6(g) and (h) of Vernon's Ann. Civ. St. art. 2372p-3[now this section] without reference to the repeal of said article by Acts 1999, 76th Leg., ch. 388, §6(a)).

¹⁶ *Id.*

¹⁷ See *Monsanto Co.*, 865 S.W.2d at 939 (Tex 1993) (see explanation of previously cited opinion at fn. 14)

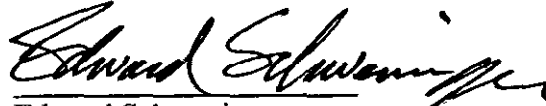
Conclusion

As a result of the 1999 codification of Article 2372p-3 (now repealed) into Chapter 1704 of the Texas Occupations Code, a County Bail Bond Board no longer has authority to consider independent appraisals of real property executed in trust from bondsmen for the purpose of determining their limit for executing bonds. A County Bail Bond Board may now only consider real property appraisals received from the County's Appraisal District for the purpose of determining real property values in setting bond limits.

Sincerely,

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cc: Bexar County Bail Bond Board