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OPINION COMMITTEE

FILE # ML-42288-01  
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By Certified Mail, Return Receipt Requested

The Honorable John Cornyn  
Attorney General of The State of Texas  
Attn: Opinion Committee Chairperson  
P.O. Box 12548  
Austin, Texas 78711-2548

RQ-0465-JC

Re: Bail Bond Board; removal of members, selection of the Justice of the Peace representative, term of office

Dear Attorney General Cornyn:

I am soliciting your opinion on behalf of the El Paso County Bail Bond Board ("the Board"). My questions are as follows: (1) may a Board member be removed by the Commissioners Court or the Board for failure to regularly attend meetings; (2) how is the Justice of the Peace representative selected for service on the Board; and (3) what is the term of office for Board members?

Removal of Board Members

A County Bail Bond Board has the power to license and suspend bail bondsmen, to police the activity of licensed bondsmen, and to foreclose or release collateral. No other board or governing body has a continuing role in its operation. It performs a "sovereign function of the government" conferred upon it to be exercised "largely independent of the control of others." Its members are thus county officers. *Aldine Independent School District v. Standley*, 280 S.W.2d 578, 583 (Tex. 1955) (quoting *Dunbar v. Brazoria County*, 224 S.W.2d 738, 740-41 (Tex. Civ. App. - Galveston 1949, writ ref'd)).

Texas Occupations Code Chapter 1704 does not prescribe a method to remove members of a Bail Bond Board. Accordingly, the only procedure for forcing a Board member from office is by a trial for misconduct. Only persons with legal standing may bring a court action.

County officers may be removed only by trial in accordance with the provisions of Article V, Section 24 of the Texas Constitution and Chapter 86 of the Local Government Code. Stated otherwise, a member of the Bail Bond Board can only be removed by a District Court judge after the court or a jury determines that legally sufficient cause exists.

Neither Commissioners Court nor the Bail Bond Board has power to remove a member of the Bail Bond Board for failure to attend meetings or any other reason.

#### Selection of the Justice of the Peace Representative

There are three potential bodies or groups who could possibly select the Justice of the Peace who serves on the Bail Bond Board: Commissioners Court, the Bail Bond Board, or the Justices of the Peace.

A principal of statutory construction akin to the maxim that “the express mention of one thing implies the exclusion of another” is the principle that an agency may not by its own rules extend or add to the powers listed in the statute. *Peterson v. Calvert*, 472 S.W.2d 314, 317 (Tex. Civ. App. – Austin 1971, writ ref’d); *Ex parte McIver*, 586 S.W.2d 851, 856 (Tex. Crim. App. 1979). Statutory construction requires the courts to ascertain and be guided by the intention of the legislature as expressed in the statute. See *City of Sherman v. Public Utility Commission*, 643 S.W.2d 681, 684 (Tex. 1983).

The statutory scheme for membership on the Bail Bond Board breaks into four groups. First, there are those officers who must serve or choose a representative of their office (e.g., Sheriff, District Attorney, County Clerk, District Clerk and County Auditor). Second, where the group of elected officials has a higher ranking or presiding officer, the ranking officer is authorized to serve or to make the selection (e.g., County Judge, Presiding District Judge, and Presiding Municipal Judge of the county’s principal municipality). Third, where all elected officials are of similar rank and have no presiding officer, an independent party makes the selection (e.g., Commissioners Court chooses a County Court at Law Judge and the Bail Bond Board chooses among several presiding municipal judges). Fourth, the members of the same group choose one of their own (e.g., Bail Bondsmen).

Commissioners Court has specific authority to name a member of Commissioners Court if the County Judge does not serve or designate someone to serve. Commissioners Court is required to choose a county court at law judge. No other authority is given or implied to make any other appointments to the Bail Bond Board. Because the legislature expressly gave the Commissioners Court power to select specific members of the Bail Bond Board, it is implied that the legislature intended for Commissioners Court to be excluded from making other appointments. The right to fill a vacancy on the Bail Bond Board is not addressed by another statute.

The Bail Bond Board has authority to choose a municipal court presiding judge. No other authority is given or implied to make appointments. Therefore, the Bail Bond Board is excluded from appointing the Justice of the Peace representative.

Justices of the Peace are all of equal rank and have no “presiding” member. Unlike other groups of similarly ranked officials, no one is designated to make the selection of which Justice of the Peace

will serve. Both the Commissioners Court and the Bail Bond Board are specifically excluded by rules of statutory construction from choosing. Based upon the statutory scheme, Justices of the Peace most likely fall into the fourth category and choose their own representative to the Board. Since there is no method for an election in the statute, the Justices of the Peace are left to devise their own method of selection. Since there is no prescribed election method, the choice of membership may be made by acquiescence, that is, the failure of the other Justices of the Peace to object.

Any agreement or arrangement among the Justices of the Peace must be recognized by all other members of the Board. In the event there is a dispute as to Justice of the Peace membership on the Bail Bond Board, the elected Justices of the Peace are the only persons with standing to complain.

#### Terms of Office

Texas Occupations Code Chapter 1704 does not state terms of office for Bail Bond Board members. The Texas Constitution states, "The duration of all offices not fixed by this Constitution shall never exceed two years." Tex. Const. Art. XVI, § 30.

The County Judge, the Sheriff, the County and District Clerks, and the District Attorney have four (4) year terms. The presiding Municipal Court Judge of the primary city in El Paso County serves for a term of two (2) years as does the Auditor. When elected or appointed to office, Bail Bond Board membership is one of the officer's rights/duties under the statute. Accordingly, each of the listed elected office holders has the right to assert membership on the Bail Bond Board for the entire length of his term in office. If an officer named in this paragraph fails to attend Bail Bond Board meetings, he may not be removed solely from the Board but must be removed for cause from his elected or appointed office in a proceeding in District Court. Tex. Const. art. V, § 24; Tex. Loc. Gov't Code Ch. 86.

Appointees do not have a statutory right to claim membership on the Bail Bond Board. Instead, they serve at the will of the appointing authority. The District Court Judge chosen by the Presiding Judge of the Administrative Judicial District, the County Court at Law Judge chosen by Commissioners Court, and the Bail Bond Surety elected by the licensed bondsmen each serve for a maximum of two (2) years, and a shorter term is permitted. Because he must be chosen by consensus of the other Justices of the Peace, the Justice of the Peace representative serves on the Bail Bond Board for a maximum term of two (2) years. Tex. Const. art. XVI, § 30. There is no limit on the number of terms any of these appointees may serve. They can serve for years, if re-designated or reelected. Failure to serve is cause for replacement by the appointing authority.

#### Conclusion

Commissioners Court and the Bail Bond Board both lack authority to remove a member of the Board. The only removal method available is to file suit in District Court for removal for cause.

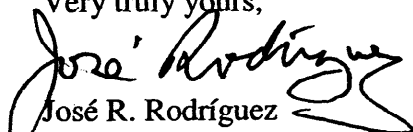
Based upon the statutory scheme, the Justices of the Peace choose their own representative to the Bail Bond Board. No exact method for making the selection is required, and whatever method the Justices of the Peace choose is acceptable.

The Sheriff, County Judge, District Attorney, Municipal Court Judge, District Clerk and County Clerk have a right to serve on the Bail Bond Board for the term of office set by the Texas Constitution for their office. The Auditor serves for as long as he is appointed Auditor as a right/duty of his position. All other appointees or designees serve for a maximum term of two (2) years.

I request from your office a formal ruling regarding the correctness of these conclusions.

I thank you in advance for your assistance in this regard.

Very truly yours,

  
José R. Rodríguez  
El Paso County Attorney