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RQ-0560-JC

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OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

2847

The Honorable John Cornyn
Attorney General
Office of the Texas Attorney General
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-42651-02
I.D. # 42651

Re: Whether Bail Bonds Made in a Bail Bond Board County to Bond a Person Out of Jail on an Out-Of-County Charge Count Against the Bondsman's Security for Purposes of His/Her Bonding Capacity

Dear Mr. Cornyn:

Limestone County, Texas is a bail bond board county. Only persons having a license issued by the Limestone County Bail Bond Board (and attorneys) may make bonds to obtain the release of persons from the Limestone County Jail. See §1704.151, *Occupations Code*. My question arises out of a situation involving bonding that occurs quite often in Limestone County. Specifically, it is frequently the case that a Limestone County licensee makes bond for a person in the Limestone County Jail who is being held based on a criminal charge from another county. The issue is whether these bonds count against the licensed bondsman's bonding limits in Limestone County.

The private attorney who assisted Limestone County in establishing the Bail Bond Board has opined to the Board that these bonds do in fact count against the licensee's bonding capacity. He cites to §1704.203 of the *Occupations Code*, which provides in several places that a bail bond licensee cannot make, and a person cannot accept, bail bonds that in the aggregate exceed a certain ratio to the security placed in trust with the Bail Bond Board. See §1704.203, (a), (f) *Occupations Code*. He has advised that absent some statutory authority to the contrary, these bonds on out-of-county charges must be counted against the bonding capacity of the licensee.

This argument would make sense in that only sureties licensed by the Limestone County Bail Bond Board can make bonds in Limestone County, and if the bonds are not counted against the licensee's capacity, they essentially are not accounted for in terms of their effect on the financial ability of the surety to stand good for his/her bonds.

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On the other hand, some local bondsmen, citing to Article 15.18 of the *Code of Criminal Procedure*, argue that the bonds are transferred to the court where the charge is pending, and should no longer be of any relevance to their bonding capacity in Limestone County. In effect, they argue that these are no longer Limestone County bonds. They further express doubt that the bonds could effectively be enforced against the security held in trust by the Limestone County Bail Bond Board, and, therefore, believe the security should not be considered encumbered by the bonds.

I have not found any authority which specifically answers this question. My inclination is to agree with the private attorney representing the Bail Bond Board that, absent statutory language to the contrary, the bonds were "executed" in Limestone County for purposes of §1704.203 of the *Occupations Code*, and must be counted against the surety's bonding capacity. One Attorney General Opinion I have reviewed does address the effect of Article 15.18 of the *Code of Criminal Procedure*, but does not answer the question at hand. In Texas Attorney General Opinion No. JC-0019 issued in 1999, your office said:

Thus, by operation of Code of Criminal Procedure art. 15.18, the bond of a bondsman licensed in one county may be transferred to a court in a county where the bondsman is not licensed.

The Opinion went on to find that the Sheriff of Brazos County could not refuse to accept a bond from a Brazos County licensee based on the licensee's default on a bond made in Brazos County on a Tarrant County charge, and indicated that a bail bond board could not suspend or revoke a license based on a licensee's default on an out-of-county forfeiture. The Opinion states in relevant part:

As you point out, the Code of Criminal Procedure provides that a person who is arrested on an out-of-county warrant for a bailable offense is entitled to bail in the county of arrest and that the bond must be transmitted to the court having jurisdiction of the offense. *See* TEX. CODE CRIM. PROC. ANN. art. 15.18 (Vernon 1977). Given that the Code of Criminal Procedure expressly contemplates that bail bonds will be transmitted between counties, you contend, a bondsman's commitment to secure the presence of the defendant in court should be enforced in every county. We are sympathetic to your concerns. It may be that article 2372p-3, with its focus on bondsmen's security on deposit in the licensing county, *see supra* note 2, does not adequately address the transfer of bonds between counties and should be amended to authorize a bail bond board to suspend or revoke the license (or to authorize the sheriff or other official taking a bail bond to refuse the bond) of a bondsman who is in default on a bond in another county, particularly when the bond was written in the county and then transmitted elsewhere. The power to amend article 2372p-3 to address

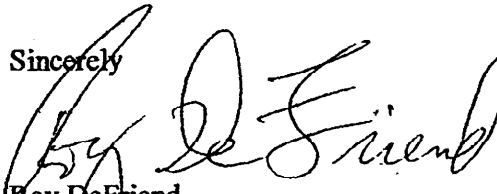
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transfers of bonds between counties, however, lies with the legislature,
not this office.

However, this language addresses suspension or revocation, and on the express language of those provisions of the former version of the Bail Bond Board Act, then found at Article 2372p-3, V.T.C.S. addressing suspension or revocation.¹ It does not address whether the bonds apply to bonding capacity in the county where the bonds were originally executed.

I respectfully request your opinion on this matter. Thank you in advance for your kind assistance.

Sincerely



Roy DeFriend
County/District Attorney
Limestone County, Texas

¹ It should be noted that the language relied upon in the Opinion (§2372p-3, §9(b)(6)) has changed in the current version of the Act, and the words "on any forfeited bond in any court of competent jurisdiction within the county of the licensee" are no longer used. See §1704.252(8) and §1704.204, *Occupations Code*.