

RQ-0579-JC

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July 18, 2002

RECEIVED

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JUL 22 2002

OPINION COMMITTEE

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

FILE # ML-42712-02
I.D. # 42712

Re: Request for Opinion: Whether a bail bond board can release security in excess of that required to maintain a bail bondsman's required ratio of security to bond obligations on the request of the bail bondsman.

To the Honorable John Cornyn:

McLennan County has a population in excess of 140,000 and has a bail bond board as established under §1704.051 of the *Occupations Code*. Chapter 1704 of the *Occupations Code* sets out certain security, licensure and security ratio requirements for bail bondsmen. See §§1704.160, 1704.203 *Occupations Code*.

Section 1704.203 of the *Occupations Code* addresses the bail bonding limit of a licensee. It establishes ratios of security to bonding authority. A licensee may not execute a bond that, "in the aggregate with other bail bonds executed by the license holder . . ." would exceed the set ratio. See §1704.203(a) and (f), *Occupations Code*. Based on the language of the statute, various ratios apply based on the number of years the licensee has been a licensed bondsman. *Id* at subsection (c).

The question that has arisen is with regard to the situation in which a bail bondsman has excess bonding authority, and wishes to obtain a release of the excess security rather than increase his bonding to the extent of that authority. By way of example, assume the ratio applicable to a bondsman is ten (10) times the value of the security held in trust, and the bondsman has put up security cash equivalents in the total amount of \$100,000. That bondsman would have one million dollars of bonding authority. However, assume that after the bondsman has written \$200,000 of bonds, he decides to restrict his bonding to the range of \$500,000, which would require, by ratio, that he have at least \$50,000 of security in trust with the Board. He then comes to the Board and requests the release of the \$50,000 in excess of what he needs to bond up to \$500,000. This is the situation which the McLennan County Bail Bond Board repeatedly has faced. It is not always a bondsman's decision to bond at a lower level that

triggers the request. Sometimes the money is needed for tax liabilities or other circumstances. The basic issue, however, is still the same no matter what the reason for the request. That issue is whether the Board is authorized to release security in excess of that necessary to cover the ratio.

The *Occupations Code* does not specifically address this issue, although it addresses the flip-side of the issue - adding security to increase bonding limits. See §1704.203(d), *Occupations Code*. The only provision of the *Occupations Code* which addresses the release or withdrawal of security is Section 1704.210. That section only speaks to the situation where a license holder:

1. ceases to engage in the bonding business, and
2. ceases to maintain the license, and
3. presents a release by the board, and
4. no judgment or bond liability, actual or potential, is outstanding against the license holder.

See §1704.210 (a) (1) and (2), *Occupations Code*.

One position that may be taken is that the only authorization for release of security provided for in the statutes governing bail bond boards relates to the circumstance where a bondsman ceases to do business, does not maintain his license, and has no potential or actual bond liability; and, therefore, unless those facts are present, no security is authorized to be released. The argument being that there is no express statutory authority for a partial release, *and* that §1704.210's restriction of its application to the cessation of a bondsman's operations impliedly restricts withdrawal/release of security to only that circumstance. As practical support of this position, one could argue that it makes sense to require the security to remain in trust after it is filed, regardless of whether the bondsman has reached his bonding limit, as the ratio only covers a percentage of the obligation, and keeping the excess security in trust further protects against loss.

The bondsmen's position is that the Board has the power, by reasonable rule or otherwise, to provide for the release of security in excess of that needed to cover the ratio. They indicate that the security is still their money/property, and to the extent not needed to cover the ratio, should be released upon reasonable request. The bondsmen assert that a logical presumption is created by the fact that the statutes authorize the bondsmen to increase their bonding limit by adding security. That presumption being that a bondsman should, or could, by Board action, be allowed to withdraw security and reduce their bonding limit just as they can add security to increase it. The bondsmen point to the fact that the excess security is not required by statute, and that the statute requires only that bonding limits are tied to a ratio applied to the security. They argue that fairness dictates that they be allowed to obtain the release of excess security, especially where circumstances change so that they do not need or plan to ever avail themselves of the additional bonding capacity. They also argue that the Board's collateral position is not compromised thereby in that their bonding limits will proportionately decrease when the security is released, thereby decreasing proportionately the risk/exposure to bond losses.

The questions on which I respectfully seek your guidance are best stated as follows:

1. Does a bail bond board have authority to pass a rule providing for or to otherwise authorize the release of security in excess of that needed to meet the ratio of

security to the outstanding bond obligations of a bondsman where the bondsman is not ceasing to act as a bail bondsman, still maintains a license, and/or has outstanding bonds (even if at a level well below the bonding authority established by the ratio)?

2. If the answer to the first question is in the affirmative, must the bail bond board do so if requested by a bondsman, or may they enact rules that provide reasonable restrictions on release, such as limiting the frequency of requests and amounts of reduction?

Thank you in advance for your kind attention to this matter.

Respectfully Submitted;

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cc: Judge George Allen
54th District Court

Steve Moore
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¹ This request was initially drafted by Mike Dixon, an attorney who does work for the County.