



RQ. DD22-6A

TARRANT COUNTY

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February 28, 2003

FILE # ML-43010-03

I.D. # 043010

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OPINION COMMITTEE

Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

VIA U.S. (REGULAR) MAIL

Re: Opinion Request from the Tarrant County
District Attorney's Office Concerning
Texas Occupations Code 1704.304

Dear General Abbott:

The Tarrant County Bail Bond Board has prompted us to request your opinion concerning the proper interpretation of the attorney and bondsman referral prohibitions in Section 1704.304 of the Texas Occupations Code.

That statute states that a licensed bail bond surety may not "recommend or suggest to a person for whom the bail bond surety executes a bond the employment of an attorney [singular] or law firm [singular] in connection with a criminal offense." *Texas Occupations Code § 1704.304 (a)*. It goes on to state in section (b) that certain enumerated persons other than bail bond sureties "may not recommend a *particular* (emphasis added) bail bond surety to another person." *Texas Occupations Code § 1704.304 (b)*. Violation of either provision or any other provision of the statute is a Class B misdemeanor.

Do these statutes prohibit only a single recommendation, while allowing a list containing multiple attorneys or bondsmen to be distributed, or do they prohibit any recommendations, no matter how numerous, from the applicable categories of persons? To state the question another way: if a bail bond surety provides a list of five attorneys for his client's consideration, has he avoided violating the prohibition by not recommending a single attorney, or has he committed a fivefold violation of the statute?

Despite the variation in wording between the singular tense of "attorney or law firm" in Section (a) and the use of the adjective "particular" in front of "bail bond surety" in Section (b), we believe that the question issue presented by Sections (a) and (b) is identical, since (a) is a nonsubstantive codification of Section 15 of former *Art. 2372p-3, V.A.C.S.* (See Section 1.001

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(a) of Acts 1999, 76th Leg., Ch. 388, § 1 codifying the Bail Bond Act as Chapter 1704 of the Texas Occupations Code)

The civil statute from which Section (a) was derived used “particular” just as current Section (b) does:

No bondsman or agent of a bondsman may, by any means, recommend or suggest to any person whose bail bond has been posted the name of any *particular* attorney [emphasis added] or firm of attorneys for employment in connection with a criminal offense. *Section 15 (b) of former Art. 2372p-3, V.A.C.S.*

We have found neither reported court decisions nor Attorney General Opinions interpreting these provisions. It seems clear that the intent of these prohibitions is to minimize any conflict of interest on the part of an attorney or bondsman which might arise from connections or obligations to a referring party, and to counter the possibility of government officials, employees, or licensees making improper use of their positions for personal financial gain. This interest might best be furthered by construing the law to prohibit any of the named referrals, whether made singly or in groups. However, the legislature is presumed to use each word for a purpose (except, perhaps, in “nonsubstantive codifications”), and a literal reading of each provision of the current statute, particularly considering that Section (b) uses the word “particular” and that Section (a) is a nonsubstantive codification of a statute making similar use of the word “particular”, seems to support the view that the statute merely prohibits referrals to ONE “particular” attorney or bondsman at a time.

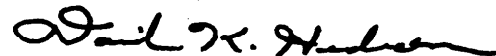
We therefore respectfully request your opinion regarding application of this statute.

Sincerely,

TIM CURRY
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS



TIM CURRY
Criminal District Attorney



DAVID K. HUDSON
Assistant District Attorney

TC/DKH/adp