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TARRANT COUNTY

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CRIMINAL DISTRICT ATTORNEY

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June 10, 2005

RQ-0352-GA

FILE # ML-44243-05

I.D. # 044243

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 pretrial release practices in counties subject to Chapter 1704 of the Occupations Code

Dear General Abbott:

The Tarrant County Commissioners Court has prompted us to request your opinion about several questions which have arisen concerning various practices connected to the pretrial release of criminal defendants in counties subject to Chapter 1704 of the Texas Occupations Code ("Bail Bond Board counties").

The Texas Code of Criminal Procedure provides that either the commissioners court of a county, or the district and county judges of a judicial district, may establish a personal bond office and employ its director. TEX. CODE. CRIM. PROC. Art.17.42, §§ 1 and 2 (Vernon 2005). Such personal bond offices do not fall within the Occupation Code's definition of "bail bond surety", because they neither act as sureties in connection with bail bonds, nor do they deposit cash to ensure anyone's appearance in court. See TEX. OCCUPATIONS CODE § 1704.001 (2); see also TEX. CODE. CRIM. PROC. Art.17.42 (Vernon 2005) (describing activities which may be carried out by personal bond office)

Tarrant County has such a personal bond office, formally called "Pretrial Services," but most often called by its former name "Pretrial Release" (which we will hereinafter use). In accordance with Art. 17.42 of the Code of Criminal Procedure, Pretrial Release gathers and reviews information about persons accused of crime, reports its findings, and makes recommendations to magistrates concerning the propriety of releasing certain individuals on personal bond in connection with the particular criminal charges the individuals may be facing. See *Id.*, §§ 1 and 4.

Honorable Greg Abbott
Re: Texas Occupation Code Opinion
June 10, 2005
Page 2

We have several questions related to signs in jails and Pretrial Release workers having contact with jail inmates.

Question 1: is it legal for a county to post signs within the secured perimeter of its jail, or in its jail intake area, which inform prisoners of the availability of personal bonds administered through Pretrial Release (in proper cases) and providing the phone number for prisoners to call the Pretrial Release office?

A "bail bond surety" is prevented from soliciting business from any person in connection with that person's arrest within 24 hours of the arrest, except with respect to Class C misdemeanors. See TEXAS OCCUPATIONS CODE § 1704.109 (Vernon 2004). Furthermore, such sureties cannot solicit business in a police station, jail, prison, or other detention facility. TEXAS OCCUPATIONS CODE § 1704.304 (c) (Vernon 2004). Nor can law enforcement officers such as jailers, deputies, or a sheriff recommend a particular bail bond surety to another person. TEXAS OCCUPATIONS CODE § 1704.304 (b) (Vernon 2004). This has been interpreted to prohibit distinguishing any specific bail bond sureties (whether one or several) from all bail bond sureties licensed in the county. See *Op. Tex. Att'y. Gen. GA-0089* (2003). Law enforcement officers are not supposed to segregate any subgroup of bail bond sureties from the total group of attorneys, law firms, or licensed bail bondsmen for any species of endorsement or recommendation. *Id.*

Strictly speaking, these laws do not seem to apply to Pretrial Release, because it does not meet the definition of a "bail bond surety." See TEXAS OCCUPATIONS CODE § 1704.001 (2) (Vernon 2004). Nevertheless, the personal bond system of Tarrant County does compete directly with the private bail bond industry for the potential business of the clients it serves. Furthermore, a sign advertising the services of Pretrial Release and the potential of personal bond is seen by some as the Sheriff or jail's endorsement of a particular kind or method of release from jail, even if it does not recommend a particular surety or group of sureties. Some might therefore argue that the proposed sign above would violate the spirit, if not the letter, of the laws cited above.

Finally, some might contend that advising arrestees about methods of jail release could constitute the "practice of law", since it involves informing individuals about legal options which might apply to their particular cases. See TEX. GOVT. CODE § 81.101 *et. seq.* (Vernon 2005) (discussing unauthorized practice of law in general).

We have not found any authority that we believe would prohibit the posting of the kind of sign mentioned above. Nevertheless, we would appreciate your opinion on the matter in light of the concerns expressed herein.

Honorable Greg Abbott
Re: Texas Occupation Code Opinion
June 10, 2005
Page 3

Question 2: along with the sign above, would it also be legal for a county to place signs in its jail notifying prisoners of the availability of cash bonds and a phone number to call in order to deposit a cash bond?

A person arrested for alleged criminal conduct may, in lieu of hiring a professional bail bond surety or being approved for a personal bond, deposit cash upon execution of his bail bond without further surety. TEX. CODE CRIM. PROC. Art. 17.02 (Vernon 2005). Such a deposit must consist of current money of the United States in the full amount of the bond. *Id.*

We analyze this question just as we do the first question, and our analysis is subject to the same concerns. Some might argue that a sign informing individuals about cash bonds presents the same problems mentioned above in connection with a personal bond sign. Although we can find no provision which, in our opinion, prohibits such a sign, we would appreciate your thoughts on these issues.

Question 3: would it be legal for the county to post a sign in its jail informing prisoners of their right to make surety bonds along with a phone number to a surety bond referral service?

This question seems to represent a variation on the questions addressed in *Op. Tex. Att'y Gen.* GA-0089 (2003). That opinion states that a law enforcement officer may not recommend or endorse one or any larger group of bail bond sureties to any person. Instead, that opinion recognizes that "a list of each licensed bail bond surety in a county may be displayed where prisoners are examined, processed, or confined." *Id.* quoting the then-current version of TEX. OCCUPATIONS CODE § 1704.105 (Vernon 2003).¹

Would the result of this opinion change if the jail simply posted a phone number for a surety referral service rather than highlighting or mentioning one or more particular sureties? Would it make any difference if the referral service referred equally to all licensed sureties in the county?

We have found no authority that would allow for such a posting or that would remove these situations from the rule expressed in GA-0089, but we would appreciate your perspective on the matter.

¹ That section has since been amended to mandate, rather than permit, the posting of a complete list of bail bond sureties and licensed agents for corporate sureties wherever prisoners are examined, processed, or confined. See TEX. OCCUPATIONS CODE § 1704.105 (b) (Vernon 2005).

Question 4: Could a group of local criminal judges mandate city jails within their county to post any of the signs listed above pursuant to their powers to create a locally prescribed system to implement procedures for the appointment of criminal defense counsel for the indigent under Texas Code of Criminal Procedure 26.04?

Under Article 26.04 of the Code of Criminal Procedure, the judges of the county courts, statutory county courts and district courts trying criminal cases in each county are given the power to create local rules and procedures for appointing counsel for indigent defendants arrested in their county. *See* TEX. CODE CRIM. PROC. Art. 26.04 (Vernon Supp. 2004-2005). For purposes of this statute as well as Art. 26.05 of the Code, "indigent" means "a person who is not financially able to employ counsel." TEX. CODE CRIM. PROC. Art. 1.051 (Vernon 2005).

There is a real world relationship between pretrial freedom and the ability to afford counsel. A person who can obtain release on bail bond, personal bond, or cash bond has the opportunity to maintain outside employment income while awaiting trial, or at least the ability to seek and perhaps obtain such employment. An incarcerated person has no such ability. Also, indigence itself is not necessarily an all or nothing; many people who might be "indigent" or unable to pay the high fees associated with serious charges like murder or child molestation might well be "non-indigent" or able to pay the fees associated with lesser charges such as misdemeanors or low-level felonies. Therefore, it is arguable that facilitating earlier and less expensive forms of pretrial liberty can decrease the public burden to provide taxpayer-funded counsel for indigents charged with crimes.

Measures facilitating use of cash bonds or personal bonds have the potential to ease the burden of indigent defense costs, because these forms of release can carry little or no ultimate expense for those accused of crime. Therefore, some have suggested that the signs mentioned above in questions 1 and 2 could be mandated under Art. 26.04 local rules.

We do not see any explicit authority for such mandates under Art. 26.04 (b), but we do acknowledge the logical connections between indigence, indigent defense, and pretrial liberty. We therefore respectfully request your opinion.

Question 5: Is it legal for employees or agents of Tarrant County Pretrial Services to interview prisoners in a city holding facility before the prisoners are processed and booked (assuming the consent and cooperation of city officials)?

Such interviews would be for the sole purpose of gathering the kind of information used to determine whether the prisoners would be suitable candidates for release on personal bond. The results of the interviews would be used solely to make recommendations to magistrates and/or judges about the prospect of personal bonds for the prisoners. All interviews would be strictly voluntary, and undertaken with the consent and cooperation of city officials.

Honorable Greg Abbott
Re: Texas Occupation Code Opinion
June 10, 2005
Page 5

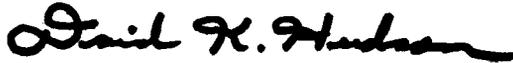
Do you know of any law which would forbid or limit such contact under these conditions?

Sincerely,

TIM CURRY
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS



TIM CURRY
Criminal District Attorney



DAVID K. HUDSON
Assistant District Attorney

TC/DKH/adp