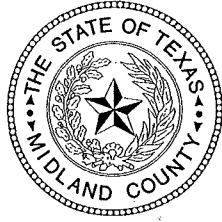


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MAY 04 2012

**OPINION COMMITTEE**



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FILE # ML-47040-12  
I.D. # 47040

**RQ-1058-GA**

April 27, 2012

Certified Mail Return Receipt 7010-1870-0001-6463-1274

The Honorable Greg Abbott  
Attorney General  
209 W. 14<sup>th</sup> St.  
Austin, TX 78701

**RE: Request for an Attorney General Opinion**

Dear Attorney General Abbott:

In my capacity as Midland County Attorney, and under the authority of *Tex. Gov't. Code §402.043*, I ask your opinion in regards to the following legal questions.

My questions seek a clarification of your opinion in *Tex. Att'y Gen. Op. No GA-0197 (2004)*. Specifically, my questions are:

1. May a bail bond board suspend or revoke an attorney under Tex. Occupations Code §1704.163 for any conviction for a felony he has committed after August 27, 1973, or may the board only do so if the felony conviction was for conduct involved with the practice of executing bail bond or acting as a surety for others?
2. If a bail bond board determines that an attorney has committed a felony that may be used to suspend him or revoke his right to act under §1704.163, what actions may the attorney take to remedy the felony conviction.

In GA-0197, you were asked several questions regarding a bail bond board's authority over attorneys under Texas Occupations Code §1704.163(b), and the extent to which that section exempts attorneys from chapter 1704's substantive requirements. In particular, you were asked to explain the conduct that would disqualify an attorney under Section 1704.163(b), which states that an attorney acting as a surety under the attorney exemption "may not engage in conduct involved with that practice that would subject a bail bond surety to license suspension or revocation."

In the summary of *GA-0197* you state as follows:

A bail bond board may determine that an attorney is ineligible to execute a bail bond under section 1704.163 if the attorney has engaged in conduct that would provide a basis for revoking or suspending the license of a licensed bondsman under section 1704.252 or section 1704.253. Because attorneys acting under the section 1704.163 exemption are not subject to chapter 1704's license and security requirements, a board may not disqualify such an attorney for conduct that violates a chapter 1704 provision or board rule relating to license and security requirements.

One of the bases for license suspension and revocation listed under §1704.252 that does not involve license and security requirements is §1704.252(5), which states that a board may revoke or suspend a license if the license holder:

“is finally convicted under the laws of this state, another state, or the United States of an offense that:

- (A) is a misdemeanor involving moral turpitude or a felony; and
- (B) is committed after August 27, 1973;”

Section 1704.252(5) is not one of the bases for license suspension and revocation that involve violations of a chapter 1704 provision or board rule relating to license and security requirements. Therefore, under your opinion in *GA-0197*, a bail bond board may use this provision to bar an attorney from executing a bail bond or acting as a surety until the attorney has remedied the violation.

The reason for this question is the particular language used in §1704.163(b), which states that a person executing a bail bond or acting as a surety under that section “may not engage in *conduct involved with that practice* that would subject a bail bond surety to license suspension or revocation.” (emphasis added). The emphasized language appears to indicate that the conduct which is prohibited by §1704.163(b) is only conduct that was in some way involved with the practice of executing a bail bond or acting as a surety. Therefore, only a felony conviction involved with that practice could be used to suspend or bar an attorney from executing bail bonds. Section 1704.252(5), on the other hand, does not appear to place any limits on the felony convictions that may be used as a bases for a suspension or revocation.

Most of the conduct listed in §1704.252 which may be used as the basis for a suspension or revocation is conduct specifically related to the practice of executing bail bonds. The only three that do not appear to be specifically related to that practice are:

(5) is finally convicted under the laws of this state, another state, or the United States of an offense that:

- (A) is a misdemeanor involving moral turpitude or a felony; and
- (B) is committed after August 27, 1973;

- (6) is found by a court to be bankrupt or is insolvent;
- (7) is found by a court to be mentally incompetent;

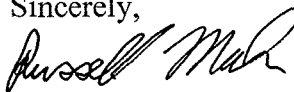
Our Bail Bond Board is concerned about a situation in which a licensed attorney who executes bail bonds or acts as a surety under §1704.163(b) is convicted of a felony that was wholly unrelated to that attorney's practice of executing bail bonds and acting as a surety under that §1704.163.

Section 1704.163(b) states that the bail bond board's ability to revoke an attorney's authority to execute bonds ends when the attorney has remedied the violation. In the case of a felony conviction, what actions by an attorney would be sufficient to remedy the violation? In *GA-0197* you stated that §1704.163(b) "necessarily gives a board the discretion to determine whether an attorney has remedied such a violation."

Obviously, determining a remedy for a felony conviction is not as simple as determining a remedy for failure to pay a final judgment on a bail bond forfeiture. For example, possible remedies for a felony conviction could include: serving the imposed sentence or paying the imposed fine; obtaining an expunction or pardon; or keeping a clean criminal record for a certain amount of time. In the case of a felony conviction, would the issue of remedying the violation simply be left to the bail bond board's discretion?

Thank you for your assistance. Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,



Russell Malm