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CAMERON COUNTY DISTRICT ATTORNEY

Luis V. Saenz

District Attorney

RQ-0490-KP

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I.D.# **49215**

December 13, 2022

Via U.S. Mail & Electronic Mail

Office of the Attorney General
The Honorable Ken Paxton
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548
E: opinion.committee@oag.texas.gov

RE: *Request for Attorney General's Opinion regarding collection of judgments on forfeited attorney-surety bail bonds.*

Dear Attorney General Paxton:

I have been informed by the Cameron County Bail Bond Board that there are a number of attorney-surety bail bonds have been forfeited and said judgments are awaiting collection. Whereas the collection of judgments against the traditional sureties has a specified procedure, there is some ambiguity as how to proceed when dealing with attorney-sureties.

BACKGROUND:

Collection of Forfeit Bond; Bond forfeiture is a criminal action governed by the rules of civil procedure. See *Blue v. State*, 341 SW.2d 917, 919 (Tex. Crim. App. 1960). The forfeited bail amount is collected by execution as in civil actions. See Tex. Code Crim. Pro. Ann. art. 22.14 (West 2022).

Cameron County Administration Building
964 E. Harrison Street ♦ Fourth Floor ♦ Brownsville, Texas 78520
Mainline: 956.544.0849 Fax: 956.544.0869

Who Collects on Forfeit Bail Bonds: Title 2 of the Texas Code of Criminal Procedure deals with costs, fees, and fines in criminal cases. Chapter 103 covers payment, collection and recordkeeping. Article 103.003 indicates that district and county attorneys, clerks of district and county courts, sheriffs, constables, and justices of the peace may collect money under title 2. *See* Tex. Code Crim. Pro. Ann. art. 103.003 (West 2022). Article 103.0031 authorizes the commissioner's court of a county to contract with a private attorney or public or private vendor for the collection of, among other things, forfeited bonds. Tex. Code Crim. Pro. Ann. art. 103.0031 (a)(1)(West 2022). Article 103.0031 (h) indicates that the commissioner's court may not contract for the collection of forfeit commercial bail bonds. *See* Tex. Code Crim. Pro. Ann. art. 103.0031 (h) (West 2022). Article 103.004 directs the disposition of collected money including recognizances, bail bonds, fines, forfeitures, judgments, jury fees, and other obligations recovered in the name of the state under any provision of title two of the Texas Code of Criminal Procedure. *See* Tex. Code Crim. Pro. Ann. art. 103.004 (a) (West 2022).

Bonds written in the due course of business by a company or agent licensed by the Cameron County Bail Bond Board are commercial bail bonds. Texas Occupations Code Chapter 1704 regulates bail bond sureties and defines bail bond business as the solicitation, negotiation, or execution of a bail bond by a bail bond surety. Tex. Occ. Code §1704.001(4) (West 2022). All sureties, except attorney sureties, are required to be licensed to execute a bail bond. Tex. Occ. Code § 1704.303(a) (West 2022).

Bonds executed by licensed sureties that are forfeit are collected through the Bail Bond Board.

Personal recognizance and cash bonds are collected by the District and County Clerks' collections departments.

Attorney sureties may pay monies owed on forfeit bonds to the District and County Clerks' collections departments.

Consequently, if an attorney surety bond is not a species of commercial bail bond; the commissioner's court may contract an outside firm to execute on the final judgments. However, if an attorney surety bond is a species of commercial bail bond, the commissioner's court may not have the authority to contract an outside firm to execute on the final judgments.

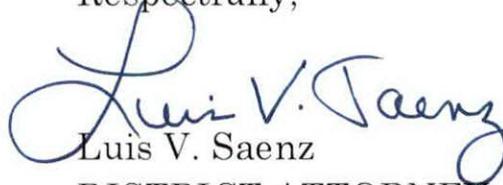
QUESTION PRESENTED:

1. Texas Code of Criminal Procedure article 103.0031, entitled Collection Contracts, authorizes the commissioner's court to enter into a contract with private attorney or public or private vendor for the collection of forfeited bonds under (a)(1) and authorizes the commissioner's court to add 30 percent to the amount owed as a collection fee under (b), but (h) says "[t]his section does not apply to the collection of commercial bail bonds." Since the Code of Criminal Procedure does not use sections, is (h) referring to the entire article or some sub-part of the article?
2. Are attorney surety bonds considered "commercial bail bonds" under article 103.0031(h)?
3. Does article 103.0031 (h), "[t]his section does not apply to the collection of commercial bail bonds," refer only to the authorization of the Commissioner's Court to add a collection fee up to 30 percent or to the entire authorization of the commissioner's court to enter into a contract with private attorney or public or private vendor for the collection of forfeited bonds?
4. If Texas Code of Criminal Procedure article 103.0031(h) refers to the entire article, does this bar a county from using third party attorneys from executing on the face amount of final judgements of forfeiture of commercial bail bonds?

5. Is it the case the District or County Attorney's Office of a particular county is the only attorney empowered to collect on forfeited attorney-surety bonds?

Any and all guidance you are able to offer on this matter is greatly appreciated.

Respectfully,


Luis V. Saenz
DISTRICT ATTORNEY