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OPINION COMMITTEE

October 3, 2001

General John Cornyn
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0445-GC

FILE # ML-42212-01
I.D. # 42212

Re: Opinion Request from the Tarrant County District Attorney's Office Concerning *Texas Occupation Code 1704.152 (c)*

Dear General Cornyn:

The Tarrant County Bail Bond Board has prompted us to request your opinion concerning the interaction between new legislation in Senate Bill 1119 (passed in 2001) and previous legislation regulating the bail bond industry, particularly the various real property collateral/bond writing ability ratios established for bail bondsmen in House Bill 3456 (passed in 1999).[1]

Before House Bill 3456, all bondsmen licensed in bail bond board counties were permitted to execute bail bonds which, in the aggregate, totaled ten times the value of property held in trust by a bail bond board as collateral to secure potential bail bond forfeitures. *Tex. Rev. Civ. Stat. Ann. art. 2372p-3, Sec. 6(g) (Vernon Supp. 1999).* House Bill 3456 introduced a new ratio schedule for bondsmen licensed on or after September 1, 1999 who pledge real estate as collateral. *See Section 1(h) and (i).* Under this new provision, bondsmen originally licensed on or after September 1, 1999 are able to maintain a lower real property collateral/bond writing ability ratio as they become more experienced license holders, unless they suffer suspension or revocation of their license, in which case they are treated like bondsmen licensed less than two years regardless of their tenure as licensees.

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[1] We refer to the 1999 legislation by its bill number because of an anomaly in that year's bail bond legislation. Texas legislation regulating the bail bond industry was, before 1999, found in Art. 2372p-3 of the Texas Revised Civil Statutes. In 1999, the legislature repealed these provisions but replaced them with similar ones in Chapter 1704 of the Texas Occupations Code. However, the legislature also passed several bills in 1999, which amended the former non-codified version of the Bail Bond Act. *See, e.g. House Bill 3456 (1999): Act of May 25, 1999, 76th Leg., 1st C.S., 1999 Tex. Sess. Law. Serv. 1096 (Vernon).* For this reason, the applicable statutory law concerning permissible ratios of collateral to bond writing ability is referred to by reference to its originating legislation rather than a traditional citation to a Texas Code or Civil Statute.

The graduated schedule created in Section 1(h) of House Bill 3456 (1999) leaves the ratio of non-real estate collateral to bond writing ability at 1/10 for all affected bondsmen. In other words, bondsmen originally licensed on or after September 1, 1999 may execute bonds totaling up to ten times the amount of non-real estate collateral they have pledged pursuant to the Bail Bond Act, regardless of how long they have been licensed or whether their license has been suspended or revoked. However, when such bondsmen pledge real estate as collateral, they are subject to the following graduated schedule of bond writing ratios:

0-2 years licensed	*writing power equal to five times collateral*
2-4 years licensed	*writing power equal to six times collateral*
4-6 years licensed	*writing power equal to eight times collateral*
6+ years licensed	*writing power equal to ten times collateral*

In 2001, the legislature recognized a new category within the bail bond business: "an individual who applies to operate the bail bond business of a license holder who has died." *Texas Occupations Code § 1704.152* (c) (Vernon Supp. 2001). (Subsection (c) was added by *Senate Bill 1119 (2001); Act of May 28, 2001, 77th Leg., 2001 Tex. Sess. Law Serv. 1262 § 3 (Vernon).* In recognizing this heretofore unknown category, the legislature explicitly exempted those within it who are "related to the decedent within the first degree by consanguinity or is the decedent's surviving spouse" from continuing education requirements that it was otherwise imposing upon bail bond licensees. *Id.*

But the legislature said nothing else about "individuals who apply to operate the bail bond business of a license holder who has died." Presumably, the bail bond board has broad discretion to make any reasonable rules concerning this category of persons that it wishes, so long as it contravenes neither statute nor constitution. *See Texas Occupations Code § 1704.101.*[2] The legislature has expressed a clear legislative intent to provide some degree of aid to surviving spouses or close relatives of a licensee who find themselves in the unenviable position of having to carry on or wind up the affairs of a business for which they are likely unlicensed. The question is: how far can the bail bond board go in letting someone "operate the bail bond business of a license holder who has died?"

Can, for example, a person "operating the bail bond business of a license holder who has died" continue to enter into surety bonds under the license of the deceased? If not, recognition of this new category would seem to have little meaning. Notwithstanding this notion, the Bail Bond Act provides that

> *Except as provided by Section 1704.163 [the 'attorney exemption], a person may not act as a bail bond surety in the county unless the person holds a license issued under this chapter.*

Texas Occupations Code § 1704.151 (Vernon Supp. 2001) The Bail Bond Act goes on to describe what it means to have "a license issued under this chapter': meeting all the requirements

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[2] Among the powers of a bail bond board set forth in the above-referenced statute are: "exercise powers incidental or necessary to the administration of this chapter, ...supervise and regulate each phase of the bonding business in the county...[and] adopt and post rules necessary to implement this chapter." *Id.*

for a bail bondsman's license. *Texas Occupations Code § 1704.152-1704.160 (Vernon Supp. 2001).* Must a board require a person who "applies to operate the bail bond business of a license holder who has died" to meet all of the requirements of *Texas Occupations Code §§ 1704.152-160* in order to make bonds under the license of the deceased? If so, this new category would seem to carry very limited benefit.

Secondly, if a board may permit someone to make bonds under the license of a deceased, is this privilege limited to individuals "related to the decedent within the first degree by consanguinity or the decedent's surviving spouse", or are these simply the only such "operators" exempted from the continuing education requirement?

Thirdly, how long, if at all, may a board permit someone to "operate the bail bond business of a license holder who has died" without obtaining his or her own bail bond license?

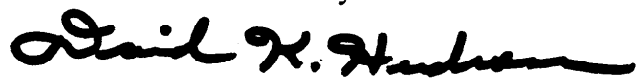
Finally, we come full circle to our fourth and final question tying back to the collateral ratio schedule created in 1999. In light of the legislature's clear intent to provide some aid to families who "inherit" a bail bond business upon a licensee's death, can a board permit a person who "applies to operate the business of [the] license holder who has died" to continue to have the benefit of any higher writing power/real estate collateral ratio that the decedent may have enjoyed due to seniority in the business? If so, could a board permit such an "operator" to maintain this higher writing power even after he or she obtains a bail bondsman's license on his or her own? The Tarrant County Board feels that the provision for operating a decedent's business will have little utility to surviving relatives unless a board can permit maintenance of previous ratios.

We therefore respectfully request your opinion regarding application of these statutes to the situations described in this letter.

Sincerely,

TIM CURRY
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS

TIM CURRY
Criminal District Attorney



DAVID K. HUDSON
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