TARRANT COUNTY

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FILE # ML-42395-02

I.D. # 42395

RQ-0502-JC

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

Re: Opinion Request from the Tarrant County
District Attorney's Office Concerning
Texas Occupations Code 1704.252 (9)

Dear General Cornyn:

The Tarrant County Bail Bond Board has prompted us to request your opinion concerning the proper interpretation of the fee-splitting prohibition in Section 1704.252 of the Texas Occupations Code. That statute states that a licensed bail bond surety may suffer license suspension or revocation on a number of grounds, specifically, if he or she

> ...pays commissions or fees to or divides commissions or fees with, or offers to pay commissions or fees to or divide commissions or fees with, a person or business entity not licensed under this chapter;

Tex. Occupations Code Ann. Sec. 1704.252 (9).

The Board is curious about the proper scope of this prohibition. Does it prohibit only division of a fee on a percentage basis, or would it also prohibit a bondsman from charging one fee for himself (a flat fee, for example, or a fee which is a set percentage of a bond's face amount) while collecting a separate fee for a lawyer, 100 % of which is remitted to the lawyer for legal fees? (This question assumes that the bondsman is not violating the statutory prohibition against referral of business to a particular attorney. *See Texas Occupations Code Ann. Sec. 1704.304 (a).* Perhaps the bondsman has been contacted by an attorney who already has a relationship with the client and who has requested the bondsman to make a bond and also to collect a legal fee or a down payment for a legal fee.)

We have found neither reported court decisions nor Attorney General Opinions interpreting this fee splitting provision. It seems clear that the intent of this prohibition is to limit or eliminate any financial relationship between a bondsman and a criminal defense lawyer that is tied to a particular client's situation. If the provision is read according to its strict language, it

seems that "fee-splitting" might refer only to a bondsman paying a "split" or percentage of money collected to someone, such as an attorney, who is not licensed under the Bail Bond Act. However, if the statute's purpose is carried to its logical extreme, it might prohibit the bondsman collecting any amount of money which is "split" with a person, such as an attorney, not licensed under the act, even if the "split" is not made on a percentage basis but is determined by calculating two mathematically independent fees.

Furthermore, we think it relevant that allowing a bondsman to collect an attorney's fee serves legitimate public policies, so long as the bondsman remits 100% of the fee to the attorney. It increases the possibility that an oral agreement for representation will be consummated by a formal written appearance of counsel before the court. Facilitating early attorney's fee payments also tends to lessen the possibility that the criminal defense attorney will eventually seek to withdraw from representation for non-payment of fees.

On the other hand, we also recognize that financial entanglement between defense lawyers and bondsman can be problematic for a host of reasons which are the motive forces behind the legal separations between these professions expressed in statutes such as *Texas Occupations Code Ann. Secs. 1704.252 (9) and 1704.304 (a)*.

We therefore respectfully request your opinion regarding application of this statute to the situation described in this letter.

Sincerely,

TIM CURRY
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS

TIM CURRY
Criminal District Attorney

DAVID K. HUDSON
Assistant District Attorney

TC/DKH/adp

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