COUNTY OF FRANKLIN

Texas

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July 9, 2004

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OPINION COMMITTEE

RQ-0246-GA

FILE # ML-43812-04
I.D. # 43812

Mr. Greg Abbott
Office of the Attorney General
PO Box 12548
Austin, TX 78711-2548

Re: Opinion Request With Brief from the County Attorney for Franklin County Concerning Authority to Write Bonds Pursuant to Texas Code of Criminal Procedure chapter 17

Dear General Abbott:

Franklin County is a relatively small county in East Texas. Its population is less than 110,000, according to the United States Bureau of the Census' 2000 Census and subsequent estimates. Franklin County has not elected to establish a bail bond board in the county.

It has been the practice in Franklin County for certain individuals to qualify as bondsmen by demonstrating the sufficiency of their security in the form of an affidavit that sets forth the amount of the security owned by the surety that is liable to execution. Subsequent to demonstrating the sufficiency of security, the bondsmen then attempt to create an attorney-in-fact by signing a power of attorney that authorizes another individual to write bonds on behalf of the bondsman. The agents have been making bonds at the sheriff's department, either by signing their own names or that of the surety for whom they work.

Franklin County's Sheriff, Charles White, has come to question whether bonds made pursuant to this practice violate chapter 17 of the Texas Code of Criminal Procedure in that such bonds do not bear the signature of the surety. Specifically, we request an opinion on the following questions:

1. Must a Texas Sheriff in a non-bail bond board county accept a bond from an attorney-in-fact for an individual surety (as distinguished from a corporate surety) who has demonstrated that the surety has sufficient security, but there has been no such showing

for the purported attorney-in-fact?

2. What is the legal effect of a "bond" that an attorney-in-fact signs with his own name under authority of an individual surety who had demonstrated that the surety had sufficient security, but there was not such showing for the purported attorney-in-fact?

3. What is the legal effect of a "bond" that an attorney-in-fact signs with the name of an individual surety, where the surety has demonstrated that the surety had sufficient security, but the attorney-in-fact has not demonstrated that his own security is sufficient?

We have addressed these questions below and provided a brief on the relevant topics:

1. Must a Texas Sheriff in a non-bail bond board county accept a bond from an attorney-in-fact for an individual surety (as distinguished from a corporate surety) who has demonstrated that the surety has sufficient security, but there has been no such showing for the purported attorney-in-fact?

a. Counties with populations of less than 110,000

Prior to 1973, chapter 17 of the Texas Code of Criminal Procedure controlled all bail bonds. Tex. Att'y Gen. LO-105 (1998). In 1973, the Legislature enacted article 2372p-3, now Texas Occupations Code chapter 1704. *Id.* (citing Act of May 18, 1973, 63d Leg., R.S., ch. 550, 1973 Tex. Gen. Laws 1520). That article created a bail bond board in all counties with populations of 150,000 or more. Due to subsequent amendments, all counties having populations of 110,000 or more now have bail bond boards. TEX. OCC. CODE ANN. § 1704.002(1). Counties with populations that do not reach 110, 000 may elect to create a bail bond board. TEX. OCC. CODE ANN. § 1704.052.

b. Bail bond procedures in "non-bail bond board counties"

Bail bond procedures in "non-bail bond board counties" are governed exclusively by chapter 17 of the Texas Code of Criminal Procedure. *See Hernandez v. State*, 600 S.W.2d 793, 798 & n. 7 (Tex. Crim. App. [Panel Op.] 1980) (holding article 2372p-3 did not apply to Taylor County because county had a population of less than 124,000); *Castaneda v. Gonzalez*, 985 S.W.2d 500, 503 (Tex. App.–Corpus Christi 1998, no pet.) (holding Texas Code of Criminal Procedure controlled bail bond procedure in Kleberg County because county had a population of less than 110,000 and had not elected to create a bail bond board); *Font v. Carr*, 867 S.W.2d 873, 882 (Tex. App.–Houston [1st Dist.] 1994, writ dism'd w.o.j.); *see also* Op. Tex. Att'y Gen. Nos. JC-0541 (2002), JM-598 (1986); Tex. Att'y Gen. LO-105 (1998).

c. Authorized Sureties Under Texas Code of Criminal Procedure Chapter 17

Both individuals and corporations are authorized to act as sureties in non-bail bond board counties. TEX. CODE CRIM. PROC. ANN. arts. 17.06, 17.08, 17.11 sec. 2. Corporations acting as sureties must file a power of attorney designating and authorizing their named agents who have the authority to write bonds on their behalf. TEX. CODE CRIM. PROC. ANN. art. 17.07.

However, individuals who wish to write bonds in a non-bail bond board county must comply with a different procedure. First, every person who wishes to act as a surety must demonstrate the sufficiency of his security. TEX. CODE CRIM. PROC. ANN. art. 17.13. A potential bondsman may accomplish this by making an affidavit that sets forth the amount of the security owned by the surety that is liable to executions. *Id.* Second, article 17.08(4) authorizes only the individual surety to sign the bond. TEX. CODE CRIM. PROC. ANN. art. 17.08(4); *Wilkins v. State*, 130 Tex. Crim. 36, 91 S.W.2d 354, 354 (1936); *Ex parte Meadows*, 129 Tex. Crim. 297, 87 S.W.2d 254, 254 (1935); Op. Tex. Att'y Gen. Nos. JM-1023 (1989), MW-507 (1982), WW-889 (1960). Thus, individual sureties, as compared to corporate sureties, must individually sign bonds and are not authorized to do so by powers of attorney. *Wilkins v. State*, 130 Tex. Crim. 36, 91 S.W.2d 354, 354 (1936); *Ex parte Meadows*, 129 Tex. Crim. 297, 87 S.W.2d 254, 254 (1935); *Tietz v. State*, 744 S.W.2d 353, 354; Op. Tex. Att'y Gen. Nos. JM-1023 (1989), MW-507 (1982), WW-889 (1960).

Attorney General Jim Mattox previously addressed a similar question in regard to a bail bond board county, but discussing chapter 17 bond requirements. "Article 17.08 of the Code of Criminal Procedure requires the bond to be signed by the name or mark of the surety. This statute has been interpreted as requiring the surety to sign the bond personally, rather than to have the attorney-in-fact for the surety sign the bond. . . .Therefore, an individual licensee cannot appoint an agent to sign bonds on its behalf." Op. Tex. Att'y Gen. No. JM-1023 (1989). Attorney General Mark White reached a similar conclusion in Op. Tex. Att'y Gen. No. MW-507 (1982). Recently, however, Attorney General Cornyn discussed article 17.08 and stated,

> An individual acts as a surety on a bail bond either by signing it personally, see Tex. Code Crim. Proc. Ann. art. 17.08(4) (Vernon 1977), or, in certain circumstances, authorizing an agent to do so on his or her behalf . . . .

Op. Tex. Att'y Gen. No. JC-0121 (1999)

We believe that Opinion No. JM-1023's analysis of article 17.08 of the Code of Criminal Procedure should apply to non-bail bond counties as well, since those counties' bail bonds are regulated by Code of Criminal Procedure chapter 17. Article 17.08 clearly requires that a bond be signed by the surety, not his agent. To require less is to circumvent the legislative requirements. We respectfully request an opinion to clear up this issue.

2. What is the legal effect of a "bond" that an attorney-in-fact signs with his own name under authority of an individual surety who had demonstrated that the surety had sufficient security, but there was not such showing for the purported attorney-in-fact?

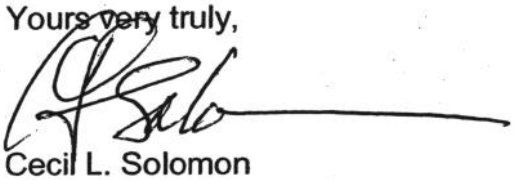
3. What is the legal effect of a "bond" that an attorney-in-fact signs with the name of an individual surety, where the surety has demonstrated that the surety had sufficient security, but the attorney-in-fact has not demonstrated that his own security is sufficient?

The above-cited authorities demonstrate that a bond must be signed by the surety. However, several decisions and opinions seem to have eroded that requirement when considering whether bonds not signed by the surety are valid.

Some cases clearly state that a bond without the surety's signature is not valid. *See, e.g.*, *Wilkins v. State*, 130 Tex. Crim. 36, 91 S.W.2d 354, 354 (1936); *Ex parte Meadows*, 129 Tex. Crim. 297, 87 S.W.2d 254, 254 (1935); *Walker v. State*, 6 S.W.2d 356 (Tex. 1928); *Tietz v. State*, 744 S.W.2d 353 (Tex. App.–Austin 1988).

However, other cases, appear to alter or modify this rule. *See Zidell v. State*, 530 S.W.2d 577 (Tex. Crim. App. 1975) (bond valid where agent signed surety's name to bond); *Greer v. State*, 382 S.W.2d 481 (Tex. Crim. App. 1964) (surety liable where he adopted signature purported to be his); *Weddel v. State*, 756 S.W.2d 76 (Tex. App.–El Paso 1988) (bond enforceable where agent signed bond with surety's apparent authority). *See also* Op. Tex. Att'y Gen. No. JC-0121 (1999).

Yours very truly,



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