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OPINION COMMITTEE

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FILE # ML-43884-04

I.D. # 043884

Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

Via Certified Mail 7160 3901 9844 1651 6915

Re: Interpretation of § 1704 of the Occupations Code and other related matters.

Dear General Abbott:

This letter is a request for your opinion on behalf of Weldon Lucas, Denton County Sheriff, concerning the interpretation of § 1704 of the Occupations Code and other related matters. Specifically, does a misdemeanor conviction for violation of § 1704.304(c) of the Occupation Code constitute a conviction of a misdemeanor involving moral turpitude for the purposes of § 1704.302(c)? If so, does that conviction excluded such a person from participating as an employee of a bail bond agent? If not, what misdemeanors do fall within the category as crimes of moral turpitude to exclude participation in that industry?

**Background**

In the scenario in question, a holder of a bail bond license is convicted after September 1, 2001 of a class B misdemeanor of soliciting bonding business in a police station, jail or prison, detention facility or other place of detainment for persons in the custody of law enforcement. As a result of the conviction the person gives up the bail bond license. Subsequently, a person's friend or relative obtains a bail bond license and the person with the misdemeanor conviction continues in the bail bond business as an employee of the friend or relative.

**Analysis**

Under § 1704.302(c) of the Occupations Code a person may not receive from a license holder money, property, or any other thing of value as payment for employment with a bonding business if, within the preceding 10 years, the person has been convicted of a misdemeanor involving moral turpitude or of a felony.

Misdemeanors involving moral turpitude have been interpreted by the courts in Texas as being crimes that involving dishonesty, fraud, deceit, misrepresentation and

deliberate violence. In re Lock, 54 S.W.3d 305, (Tex. 2001). Specifically, convictions for theft, fraud, deceit, deliberate violence or fraud have been held to be crimes of moral turpitude. In re Lock, 54 S.W.3d 305, (Tex. 2001); Robertson v. State, 685 S.W.2d 488, 492 (Tex.App.-Fort Worth 1985, no pet.); In re Humphreys, 880 S.W.2d 402 (Tex.1994); In re Birdwell, 20 S.W.3d 685, (Tex. 2000). However, a conviction for procession of a controlled substance or alcohol offenses have been held to not be a conviction of moral turpitude. Hardeman v. State, 868 S.W.2d 404 (Tex.App.-Austin, 1993).

What the controlling factor is in determining whether a crime is one of moral turpitude or not is whether or not the actor had the willful intent to be deceitful or deceptive. Applying this to the facts at hand, one must conclude that the legislature in drafting the relevant statutes intended to prohibit deceptive conduct by persons in the bail bond business. This would have to include soliciting bonds in a prohibited area. Specifically, one can easily draw conclusion to this type of conduct and barratry which has been classified as a serious crime similar to a crime of moral turpitude. Duncan v. Board of Disciplinary Appeals, 898 S.W.2d 759, (Tex. 1995).

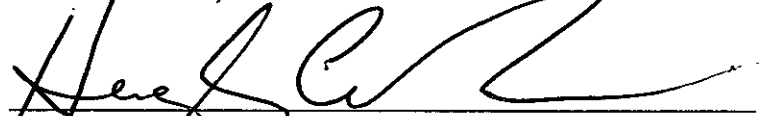
#### Conclusion

I would conclude that a conviction under § 1704.302(c) of the Occupations Code would constitute a crime of moral turpitude and would prohibit that person from participating in the bail bond business. Furthermore, I would aver that employing any such convicted person under the above described background would subject the employer to possible prosecution/sanctions under § 1704 of the Occupations Code.

Thank you for your assistance in this matter. I look forward to your prompt response.

Sincerely,

BRUCE ISAACKS, CRIMINAL DISTRICT ATTORNEY



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