

THE OFFICE OF

THE CRIMINAL DISTRICT ATTORNEY

RECEIVED McLENNAN COUNTY, TEXAS

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OPINION COMMITTEE

July 11, 2006

JOHN W. SEGREST
CRIMINAL DISTRICT ATTORNEY

Hon. Greg Abbott
Texas Attorney General
Attention: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0507-GA

Re: Request for Opinion Concerning the Scope of a Bail Bond Board's Authority

Dear General Abbott:

Attached is a request for an AG's opinion drafted by Mr. Mike Dixon, a private attorney who represents McLennan County and the County's Bail Bond Board. Also attached for informational purposes is an email communication which may be helpful.

I adopt the attached request and incorporate it herein by reference as my own. I ask that you address the questions set forth therein, and provide any other guidance relevant to the issue.

Very Truly Yours;

John W. Segrest
Criminal District Attorney

cc: Mike Dixon
Haley & Olson, p.C.
510 North Valley Mills drive
Waco, Texas 76710
Without Attachments

July _____, 2006

Mr. Greg Abbott
Attorney General of Texas
Office of the Attorney General
Attn: Opinions Committee
P.O. Box 12548
Austin, TX 78711-2548

Via CMRRR # _____

Re: Opinion Request

To the Honorable Greg Abbott:

McLennan County is a bail bond board county under Chapter 1704 of the Occupations Code. My question is regarding the scope of the Board's authority to regulate advertising and/or solicitation. Specifically, concern has arisen over a bondsman having the name and information for his bonding business painted on the doors of the vehicle that he drives to and parks at the County Jail when there on business. There have reportedly been several instances where family or friends of a detainee have come to the Jail and, upon seeing the information on the side of the vehicle, have approached or called the bondsman about making the detainee's bond. Some of the other bondsmen believe that this is an unfair practice and should be stopped. The Board has considered a proposal to enact a local rule prohibiting vehicles used by licensees at the Jail from having company information or advertising displayed on them. However, the matter has been tabled due to questions as to the Board's authority to pass such a rule, and related matters.

I respectfully request an opinion on the following:

1. Does §1704.304(c) of the Occupations Code, which prohibits solicitation of bonding "in a jail," prohibit advertising or licensee information from being displayed on a licensee's vehicle in a jail parking lot?
2. If the answer to number 1 is in the negative, does the Bail Bond Board have authority to pass a local rule prohibiting the display of licensee advertising or information on licensee vehicles that are parked in the Jail

parking lot?

3. If the answer to number 2 is affirmative, would such a regulation be violative of the First Amendment rights of licensees respecting “commercial speech”?

Section 1704.304(c) of the Occupations Code, prohibits “solicitation” of bonding “in a jail.” The statute only prohibits solicitation of bonding *in* a jail, however, I believe that it would be reasonably interpreted to apply to the parking areas of a jail also. *See* § 1704.304(c), Occupations Code. The more daunting issue is whether information displayed on the side of a vehicle is “solicitation” in the first instance. “Soliciting” and “advertising” would not appear to be the same. To “solicit” means to seek to obtain by persuasion, application or petition. *See* www.dictionary.com. Whereas, to “advertise” means to call attention of the public to a product or business. *Id.* Solicitation involves seeking something from an identified individual or entity, whereas advertising is more generally aimed at the public as a whole. However, it is unclear whether the legislature was intending such a technical distinction. In reality, “advertising” in a jail implicates most of the same concerns as direct solicitation-disruption, unfair competition, etc. Therefore, it would be logical that the statute would reach advertising at a jail, even though it may not be aimed at a specific person, as the goal of the advertising is obviously to obtain bonding business.

If §1704.304(c) does not prohibit the display of licensee advertising or information on a vehicle used at the jail; the next issue is whether the Board has authority to regulate this matter. The Board has the authority to “supervise and regulate each phase of the bonding business” and to adopt rules necessary to implement the Bail Bond Act. *See* §1704.101(3), (4), Occupations Code. One Court has held, addressing dissimilar advertising/solicitation regulations of the Harris County Bail Bond Board, that the broad authority over each phase of the bonding business granted to a board “includes the power to regulate the solicitation of a bail bond.” *See Harris County Bail Bond Board v. Pruett*, 177 S.W.3d 260, 270 (Tex. App. – Houston [1st Dist.] 2005, writ granted). The regulations under consideration in *Pruett* are now codified at §1704.109 of the Occupations Code. However, a subsequent federal court case has held §1704.109 to be constitutionally infirm on First Amendment grounds. *See Pruett v. Harris County Bail Bond Board*, 400 F.Supp.2d 967, 975-980 (S.D. Tex. 2005). This leads to the next question.

Assuming that the Board has authority to pass a regulation prohibiting the display of licensee advertising or information on a vehicle at the Jail, would such be constitutional under the First Amendment’s protection of commercial speech? Commercial speech receives a limited form of First Amendment protection. It appears from the authorities that a court examines the following factors in analyzing a restriction on commercial speech:

- (1) whether the expression concerns a lawful activity and is not misleading;
- (2) whether the government's interest is substantial;

- (3) whether the restriction directly serves the asserted interest; and
- (4) whether the restriction is no more extensive than necessary.

The local rule proposed for adoption by our Board is dissimilar from the restrictions addressed by the federal court in Pruett. However, the holding is concerning nonetheless.

Your guidance is respectfully requested. Thank you in advance for your kind attention to this matter.

Sincerely,

John Segrest
District Attorney
McLennan County, Texas