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April 8, 2008

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

FILE # ML-45641-08
I.D. # 45641

RQ-0700-GA

RE: Request for Opinion Concerning Hays County Bail Bond Board's Lawful Authority over Licensee's Out-of-County Bail Bond Activity.

Dear General Abbott:

Pursuant to Subchapter C of Chapter 402, Texas Government Code, the Hays County Criminal District Attorney hereby requests your opinion regarding an issue concerning public interests and official duties. We seek your opinion on the extent of the Hays County Bail Bond Board's lawful authority over a licensee's out-of-county bail bond¹ activity.

I.
Facts

Hays County is a bail bond board county. On March 28th, 2008, the Hays County Bail Bond Board (hereinafter "the Board") considered commencing formal action against an individual licensee for his failure to comply with section 1704.301 of the Texas Occupations Code (Return of Security). While the Occupations Code clearly authorizes a bail bond board to suspend or revoke a license when a licensee violates any provision in chapter 1704, the code is not clear if the Board's authority extends to activity on out-of-county bonds. The item was tabled pending this request for an opinion.

¹ All references to "out-of-county bail bonds" means bonds executed in Hays County for an arrest in Hays County on a warrant from another county.

The licensee, Lynn Autry d/b/a Ace Bail Bonds, has been licensed for approximately four years. On September 9, 2005, Mr. Autry executed a bail bond in Hays County for Kevin Michael Ray in the amount of \$50,000. Exhibit A (Bail Bond). Mr. Ray was arrested in Hays County on a Larceny warrant out of Fort Bend County. As security for the bond, Mr. Autry required that the indemnitor, defendant's mother (Candace Ray), deposit with him \$14,000 in collateral. Exhibit B (Indemnity Contract). Ms. Ray paid the collateral by credit card. Exhibit C (Credit Card Payment & Receipt). Kevin Ray's case was finally disposed on October 29th, 2007. Exhibit D (Final Judgment).

On December 5th, 2007, Ms. Ray filed a complaint with the Hays County Bail Bond Board alleging that Lynn Autry d/b/a Ace Bail Bonds had not returned her security as promised. Exhibit E (Complaint). Attached to the complaint was a letter dated November 1, 2007, from Ms. Ray to Ace Bail Bonds requesting the return of the collateral, and enclosing the final judgment in the Larceny case.

According to Candice Ray's written complaint, Kevin Ray's bond was revoked on October 12, 2006 for Mr. Ray's failure to appear. However, Fort Bend County prosecutors did not file a Judgment Nisi to forfeit the bond prior to final disposition of the case. When the Hays County District Attorney's Office contacted Lynn Autry about the return of the security, Mr. Autry stated that he needed a written release from Fort Bend County before he would return the security. Mr. Autry was released from liability on the \$50,000 bail bond by Hays County on July 18, 2007. Exhibit F (Ace's Bond Report & Surety's Request for Release).

The Hays County District Attorney's office recommended to the Board that the security be returned to the indemnitor, because the bond was not forfeited, the criminal case was finally disposed, and section 1704.301 did not require a written release by the Fort Bend prosecutor. Exhibit G (District Attorney Memo).

On January 18th, 2008, the Board voted to approve the recommendation of the District Attorney and to send a letter to the licensee, Lynn Autry d/b/a Ace Bail Bonds, requesting that he return the security to the indemnitor, Candace Ray, within 30 days. Exhibit H (Board Posting). The letter was sent by regular mail and certified mail, return receipt requested, and warned that failure to comply with the letter could result in formal notice of a hearing pursuant to section 1704.254. An employee of the licensee was present at the meeting.

Ace Bail Bonds did not return the security. On March 28th, 2008, the Board set the matter for a hearing to consider whether to commence formal action to suspend or revoke. The item was tabled pending this request.

II. Argument and Authority

A Bail Bond Board has the authority to suspend or revoke a license if the licensed bondsmen engages in one of sixteen categories of conduct, including failing to return security in accordance with section 1704.301. See §1704.252; Tex. Att’y Gen. Op. No. GA-0197, pp. 5-6 (2004). While we believe the licensee has engaged in prohibited conduct, the Board is not certain if the Hays County Bail Bond Board has the authority to regulate activity involving out-of-county bail bonds.

Section 1704.301 provides that a bail bond surety may not hold security for the payment of a bail bond fee or to assure the principal’s appearance in court for more than 30 days after the date on which the owner of the security: (1) requests return of the security in writing; and (2) submits to the bail bond surety written evidence of the conclusion of (a) the payment agreement; or (b) all of the criminal cases for which the security was given.

Candace Ray is the true owner of the collateral, because the \$14,000 was drawn from her credit card account and the indemnity contract lists Candace Ray as the indemnitor. Moreover, above the “Indemnitor Signature” line, which is signed by Candace Ray, on paragraph 2, there is a hand written note that says “fees: collateral \$14,000 pd. in full w/credit card, indemnitor will receive collateral back within 60 days after defendant reaches final judgment.” A review of the indemnity contract and the Bail Bond Indemnity Agreement reveals that the \$14,000 collateral was intended to secure only the Larceny charge. When the case was finally resolved, the licensee was given ample notice and opportunity to return the security.

On November 1, 2007, Candace Ray made a written request to Ace Bail Bonds for the return of the security, and attached a copy of the final judgment for the Larceny charge. She requested the return of the full \$14,000, which was intended to secure only the Larceny charge. The indemnitor’s written request satisfied her burden under section 1704.301. Further, on January 18th, 2008, the Board approved the District Attorney recommendation and sent a certified letter to the licensee, which was received on January 26, 2008. Furthermore, an employee of the licensee was present at the meeting.

We find no authority for Autry’s proposition that he is entitled to a written release from the prosecutor of Fort Bend County, before he returns the security in

question. Therefore, we conclude that Lynn Autry d/b/a Ace Bail Bonds is in violation of section 1704.301.

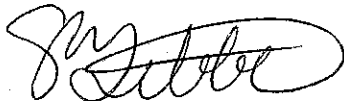
Because the bond is an out-of-county bond, we cannot say for certain that the Hays County Bail Bond Board has the authority to proceed with a formal suspension or revocation hearing under section 1704.252.

III.
Question

Can the Hays County Bail Bond Board suspend or revoke an individual surety license for that licensee's activity relating to an out-of-county bond?

If you have any questions or concerns, please do not hesitate to call. Thank you for your assistance in this matter.

Yours truly,



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Hays County, Texas



David A. Mendoza
Assistant District Attorney
Hays County, Texas