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OPINION COMMITTEE



FILE # M1-46020-06

I.D. # 46020

HOMERO C. CANALES  
ASSISTANT DISTRICT ATTORNEY

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ASSISTANT DISTRICT ATTORNEY

RUMALDO SOLIS, JR.  
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Office of the District Attorney  
79th Judicial District of Texas

JIM WELLS AND BROOKS COUNTIES

ARMANDO G. BARRERA  
DISTRICT ATTORNEY

ANTONIO VERA  
INVESTIGATOR

ADAN CARO  
INVESTIGATOR

JAIME GARZA  
INVESTIGATOR

RQ-0786-GA

Office of the Attorney General  
Opinions Committee  
209 W. 14<sup>th</sup> Street  
P.O. Box 12548  
Austin, TX 78711-2548  
VIA: Regular Mail and Facsimile (512) 463-2063

Dear Sirs,

The District Attorney for the 79<sup>th</sup> Judicial District, State of Texas, is requesting an Attorney General's opinion concerning the ability of a county bail bond board to assess a fee to all bail bond companies or bondsmen (which operate in their jurisdiction) for the administrative cost of a county bail bond administrator.

More specifically, does §1704.101 of the Texas Occupations Code (or any other statutory provision) allow the county bail bond board the ability to collect an amount of money (designated as an administrative fee) from bonding companies or bondsmen to provide for the costs of the bail bond administrator? Either at the time of the county bail bond board licenses the bonding companies or bondsmen, or each time the bonding companies or bondsmen post bond for arrestees?

Thank you in advance for your assistance in this matter.

Sincerely,

John C. Lemon  
Assistant District Attorney

JCL/mib

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**OPINION COMMITTEE****HOMERO C. CANALES**  
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**79th Judicial District of Texas**

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March 9, 2009

Nancy S. Fuller  
Attorney General Opinions Committee  
P.O. Box 12548  
Austin, TX 78711-2548  
VIA: Regular Mail and Facsimile (512) 463-2063

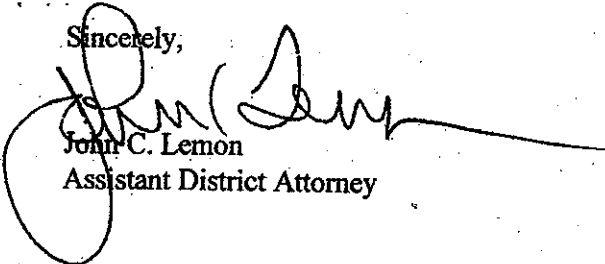
RE: Ref. ID# 46010

Dear Ms. Fuller,

Enclosed herewith please find the letter brief in response to your request of March 4, 2009.

Thank you in advance for your assistance in this matter.

Sincerely,

  
John C. Lemon  
Assistant District Attorney

JCL/mb

**Question:**

Does §1704.101 of the Texas Occupations Code (or any other statutory provision) allow the county bail bond board the ability to collect an amount of money (designated as an administrative fee) from bonding companies or bondsmen to provide for the costs of the bail bond administrator? Either at the time of the county bail bond board licenses the bonding companies or bondsmen, or each time the bonding companies or bondsmen post bond for arrestees?

**Research:**

State agencies may adopt those rules that they are authorized by, and which are consistent, with the particular agency's statutory authority. Pruett v. Harris County Bail Bond Board, 249 S.W.3d 447, 453-456 (Tex. 2008); R.R. Comm'n of Tex. v. Lone Star Gas Co., 844 S.W.2d 679, 685 (Tex.1992).

As stated in the Pruet case "such authority may be either expressly conferred by statute or implied from other powers and duties given or imposed by statute." Id. When determining the authority of an agency the key question is whether or not the action in question is "in harmony with the general objectives of the Act involved." Pruett v. Harris County Bail Bond Board, 249 S.W.3d 447, 453-456 (Tex. 2008); Gerst v. Oak Cliff Sav. & Loan Ass'n, 432 S.W.2d 702, 706 (Tex.1968); Citizens Bank of Bryan v. First State Bank, Hearne, Tex., 580 S.W.2d 344, 348 (Tex.1979).

Legislative intent is ascertained from the plain and common meaning of the statute granting such authority. Fitzgerald v. Advanced Spine Fixation Sys., Inc., 996 S.W.2d 864, 866 (Tex.1999); Argonaut Ins. Co. v. Baker, 87 S.W.3d 526, 529 (Tex.2002).

The specific Text of the controlling statute states that:

A board shall:

- (1) exercise powers incidental or necessary to the administration of this chapter;
- (2) deposit fees collected under this chapter in the general fund of the county;
- (3) supervise and regulate each phase of the bonding business in the county;
- (4) adopt and post rules necessary to implement this chapter;
- (5) conduct hearings and investigations and make determinations relating to the issuance, denial, or renewal of licenses;
- (6) issue licenses to qualified applicants;
- (7) deny licenses to unqualified applicants;
- (8) employ persons necessary to assist in board functions; and
- (9) conduct board business, including maintaining records and minutes.

Texas Occupations Code §1704.104 .

In Pruett the court found "when a statute expressly authorizes an agency to regulate an industry, it implies the authority to promulgate rules and regulations necessary to accomplish that purpose. Pruett v. Harris County Bail Bond Board, 249 S.W.3d 447, 453-456 (Tex. 2008); Dallas County Bail Bond Bd. v. Stein, 771 S.W.2d 577, 580 (Tex.App.-Dallas 1989, writ denied). It was specifically held that "by conferring upon an agency the power to make rules and regulations necessary to carry out the purposes of an act," the court reasoned, "the Legislature forecloses the argument that it intended to spell out the details of regulating an industry." Id. at 580; Tex. Liquor Control Bd. v. Super Sav. Stamp Co., 303 S.W.2d 536, 540 (Tex.Civ.App.-San Antonio 1957, writ ref'd n.r.e.) (cited with approval in Gerst, 432 S.W.2d at 706); Black v. Dallas County Bail Bond Bd., 882 S.W.2d 434, 436 (Tex.App.-Dallas 1994, no writ) (holding that the "broad grant of authority to supervise and regulate all phases of the bonding business impliedly authorizes the Board to enact rules on any phase of the business").

**Conclusion:**

While it appears there is ample authority discussing the broad authority of the controlling statute, and such fees would be within the authority of the bonding board, we have been unable to find a determination regarding the issue of administrative fees being charged to the bonding companies or bondsmen.