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OPINION COMMITTEE



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RQ-1067-GA

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June 4, 2012

The Honorable Greg Abbott
Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
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Re: REQUEST FOR AN OPINION REGARDING SUBSTITUTION OF COLLATERAL FOR
A LICENSED BONDSMAN
(CA File #OP-12-190)

Dear General Abbott:

I am soliciting your opinion on behalf of the El Paso County Bail Bond Board ("the Board") regarding the authority of the El Paso County Bail Bond Board to accept a combination of cash and real property security from a licensed bondsman. The questions presented are:

1. Can a bail bond board authorize a licensed bail bondsman to withdraw a portion of his deposited or executed security and replace it with a different type of collateral if doing so results in a combination of security types to meet the minimum security requirement under Tex. Occup. Code § 1704.160?
2. Can a bail bond board authorize a bondsman to post additional security in a form different from that originally deposited or executed after the initial minimum security deposit required under Tex. Occup. Code § 1704.160 has been satisfied?

Background

A licensed bondsman has executed in trust to the board several pieces of real property to meet the minimum security requirement of \$50,000 under the Texas Occupations Code. *See* TEX. OCCUP. CODE ANN. §§ 1704.160, .203 (2012). Each piece of property is valued less than \$50,000, but in the aggregate totals approximately \$52,000. Recently, the bondsman requested that the Board release one of the real properties executed in trust to the Board in exchange for a certificate of deposit of equal value. Our office relied on Texas Attorney General Opinion No. JM-875 in advising the Board that they did not have authority to grant the bondsman's request if doing so would result in a combination of a certificate of deposit and property to meet the minimum security deposit. It remains unclear the extent to which Opinion No. JM-875 applies to a licensed bondsman, as opposed to an applicant. Additionally, provisions in the Texas Occupations Code do not restrict the type of security that a licensee may deposit or execute to add to or replace security to the same type of collateral as that originally deposited under Tex. Occup. Code § 1704.160.

Legal Arguments and Authorities

Corporate and individual bail bondsman applicants are required to deposit or execute, in trust, to a bail bond board some form of security. TEX. OCCUP. CODE ANN. § 1704.160(d). Individual applicants have the option of (1) depositing a cashier's check, certificate of deposit, or cash *or* (2) executing in trust to the board nonexempt real property. *Id.* § 1704.160(a)(1) (emphasis added). As stated above, bondsmen are required to deposit or execute at least \$50,000 in order to execute bonds. *Id.* at §§ 1704.160, .203 (2012).

Texas Attorney General Opinion No. JM-875 (1988) interpreted that under section 6(f) of former article 2372p-3 [now Tex. Occup. Code § 1704.160(a)], a bail bond board was not authorized to accept from an applicant for a bail bond license a combination of cash and real property to meet the minimum security requirement. *See also* Tex. Att'y Gen. Op. No. DM-108 (1992) (quoting JM-875 for its conclusion that "a board has no authority to depart from the security deposit requirements and accept a combination of cash and deeds to property in order to make up the minimum requisite amount"). The opinion relied on *Bexar County Bail Bond Brd. v. Deckard* for the proposition that a bail bond board was limited by statute in its powers and therefore was restricted to accept only security in an amount no less than \$50,000. Tex. Att'y Gen. Op. JM-875 at 3 citing *Bexar County Bail Bond Brd. v. Deckard*, 604 S.W.2d 214 (Tex. Civ. App. – San Antonio 1980, no writ) ("statute designates persons to whom licenses are to be issued, and the designation is in terms of persons who qualify under the terms of the statute").

At the time the Attorney General's Opinion was released in 1988, article 2372p-3 contained two statutory provisions that did not restrict the type of security a bondsman may deposit or execute; however, the opinion did not discuss their applicability.

"... When a bondsman's total liability on judgment nisi reaches two times the same amount as he has on deposit as security, no further bonds may be written until the bondsman posts additional security as required in this subsection. A bondsman whose license is effective may, at any time, by posting additional security, increase the bondsman's limit." TEX. REV. CIV. STAT. ANN. art. 2372p-3, section 6(g).

"...When any sums are depleted from the deposit or trust to pay a judgment resulting from a forfeited bond, the licensee shall, as a condition to continuing as a licensee, replenish the amount so depleted up to the amount of the required minimum deposit to secure other bonds in force." TEX. REV. CIV. STAT. ANN. art. 2372p-3, section 6(h).

Sections 6(g) and 6(h) have since been codified in the Texas Occupations Code § 1704.203 and § 1704.206¹. Section 1704.203 expanded section 6(g) bonding limits by 1) amount and type of security deposited or executed under § 1704.160, 2) the number of years the bondsman has been licensed, and 3) whether a bondsman has had their license suspended or revoked². TEX. OCCUP. CODE ANN. § 1704.203. As its predecessor, § 1704.203 also permits a licensee, at any time, to increase their bonding limits by depositing or executing additional security in any form. *Id.* § 1704.203(d). Similarly, Section 1704.206 provides that if a final judgment on a forfeiture of a bail bond is paid from the security deposited or executed under § 1704.160, the licensee may deposit or execute additional security in any form provided that it meets the minimum statutory requirement of \$50,000. *Id.* § 1704.206.

Conclusion

We request your assistance in reconciling Op. No. JM-875 with §1704.203 and §1704.206 to determine whether a board is authorized to permit an applicant or a licensed bondsman to combine their security to meet the minimum security deposit amount of \$50,000

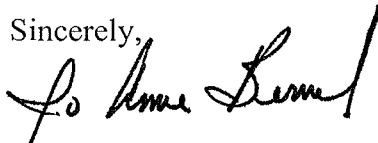
¹ Act of May 13, 1997, 76th Leg., R.S., ch. 388, § 1 secs. 1704.001 - .306, 1999 Tex. Gen. Laws 1431, 2277-91.

² Bondsman licensed before September 1, 1999 authorized to execute ten times the value of the security deposited or executed. Bondsman licensed on or after 1999 and has been licensed fewer than two years or has had license suspended or revoked authorized to execute up to ten times the value of property held as security plus five times the value of property held in trust under Bondsman licensed for two to four years authorized to execute up to ten times the value of property held as security plus six times the value of property held in trust. Bondsman licensed for four to six years authorized to execute up to ten times the value of property held as security plus eight times the value of property held in trust. Bondsman licensed for at least six years authorized to execute up to ten times the value of property held as security plus ten times the value of property held in trust.

either as an initial deposit or replacement security of the minimum. Additionally, we request your opinion as to whether thereafter a bondsman is authorized to deposit or execute a combination of security in order to increase his or her bonding limits or in order to pay a final judgment on a bond forfeiture provided that the combination of security is not less than the minimum required by a licensee under § 1704.160.

I respectfully request your opinion regarding these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Jo Anne Bernal". The signature is written in a cursive style with a large initial "J" and "A".

Jo Anne Bernal

El Paso County Attorney