Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 21, 1998

The Honorable John W. Segrest
Criminal District Attorney, McLennan County
219 North Sixth Street, Suite 200
Waco, Texas 76701

Letter Opinion No. 98-068

Re: Whether a county bail bond board is authorized to regulate bondsmen's use of certain assumed names and related questions (RQ-1106)

Dear Mr. Segrest:

You ask a number of questions about the use of assumed names by licensed bail bondsmen. First, you ask if an individual bail bond licensee may operate under an assumed name that is the name of a person who is not eligible to be licensed or whose license has been revoked and if a county bail bond board is authorized to promulgate a rule prohibiting the practice. We conclude that while, as a general matter, a county bail bond board does not have the authority to regulate bondsmen's use of assumed names, a bail bond board does have the authority to respond to the particular situation you describe. You also ask if a corporate bail bond licensee may do business under an assumed name and if the agents of a corporate bail bond licensee may operate under assumed names. We conclude that the authority of a corporate bail bond licensee and its agents to use assumed names is governed by the Insurance Code and Department of Insurance regulations.

We begin with your questions about the use of assumed names by individuals who are licensed bondsmen. The authority of a county bail bond board to license and regulate bondsmen is governed by article 2372p-3, V.T.C.S. The use of assumed names is governed by chapter 36 of the Business and Commerce Code. *See, e.g.*, Bus. & Com. Code §§ 36.10 - .11 (assumed name certificate requirements), .12 (material change in information requiring new certificate), .14 (procedures for abandoning use of assumed name). This office has previously concluded that bondsmen who use assumed names must comply with chapter 36 and that, as a general matter, a county bail bond board does not have the authority to regulate bondsmen's use of assumed names:

> "An individual may use an assumed name in the writing and posting of bonds, provided, however, that the use of such a name does not violate either the statutory or common law regarding names. Nothing in article 2372p-3 would prohibit the use of an assumed name by an individual properly licensed in a county with a bail bond board . . . . However, the use of an assumed name is proper only after . . . [an] individual complies with the filing requirements of chapter 36 of the Texas Business and Commerce Code." Attorney General Opinion MW-321 (1981) at 3. This office has also concluded that while a bondsman may operate under an assumed name, a bail bond board may not issue more than one license to any one individual.

> *See* Attorney General Opinion JM-1023 (1989); Letter Opinion [No.] 96-044 (1996).

Letter Opinion No. 97-050 (1997) at 1-2. For this reason, we concluded in Letter Opinion No. 97-050 that a bail bond board is not authorized to prevent an individual licensee from using an assumed name recently abandoned by another licensee. *See id.* at 3-4.[1]

Although a bail bond board does not have the authority to regulate licensees' use of assumed names as a general matter, you express concern about a particular situation. You state that bondsmen in your county are "us[ing] the names of disqualified individuals or revoked licensees" and that "the disqualified individual or revoked licensee maintains some business arrangement with the licensee who uses the assumed name whereby the disqualified individual or revoked licensee shares in the profits of the business." Article 2372p-3 authorizes a bail bond board to respond to this situation. First, a bail bond board has authority to suspend or revoke the license of the bondsman. Section 9(b)(7) provides that a bail bond board may, after notice and hearing, revoke or suspend a license for "paying of commissions or fees or dividing commissions or fees or offering to pay or divide commissions or fees with any person, company, firm, or corporation not licensed under this Act to execute bonds."[2] In addition, the unlicensed person who permits use of his name is subject to prosecution under section 15(g), which prohibits any person from "advertis[ing] as a bondsman who does not hold a valid license under this Act."[3]

Finally, while a bail bond board has no authority with respect to licensees' use of assumed names as a general matter, a bail bond board may have some limited rule-making authority regarding the specific business relationships you describe. Courts have stricken county bail bond board regulations that add licensing requirements or bases for license revocation and suspension not set forth in article 2372p-3.[4] In 1989, however, an appellate court approved a bail bond board rule prohibiting licensees from employing certain felons and misdemeanants as agents to "perform meaningful duties." *See Dallas County Bail Bond Bd. v. Stein*, 771 S.W.2d 577, 580-81 (Tex. App.--Dallas 1989, writ denied). The court distinguished prior cases disapproving bail bond board rules:

> In each of these cases, the county boards had denied applications for licenses on the ground that the applicant failed to comply with certain local rules. Since the Bail Bond Act expressly sets forth the requirements for a license, these courts correctly reasoned that the local boards lacked authority to

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[1]There was no suggestion in the query requesting Letter Opinion No. 97-050 that the other licensee was ineligible for licensure or that the two licensees had a business relationship prohibited by article 2372p-3.

[2]V.T.C.S. art. 2372p-3, § 9(b)(7).

[3]*Id.* § 15(g).

[4]*See Texas Fire & Cas. Co. v. Harris County Bail Bond Bd.*, 684 S.W.2d 177, 178 (Tex. App.--Houston [14th Dist.] 1984, writ ref'd n.r.e.); *Bexar County Bail Bond Bd. v. Deckard*, 604 S.W.2d 214, 216 (Tex. Civ. App.--San Antonio 1980, no writ).

> impose different or additional requirements . . . . [H]owever, the Bail Bond Act does not expressly set forth eligibility requirements for employees of licensees. Thus, such analysis is inapplicable to the present case.

Id. at 580. The court noted that the rule at issue, which had been challenged by a prior licensee who had been convicted for deadly assault and was therefore ineligible for licensure, "merely foreclosed the possibility that an individual who is ineligible for a license under the Act could circumvent this requirement by operating a bonding business as an agent of a licensee." *Id.*[5] In essence, you describe a situation in which licensees are using assumed names and participating in certain business relationships in order to allow others to participate in the bonding business without a license. Thus, a court might approve a carefully crafted rule prohibiting the types of business relationships you describe, provided that the rule is consistent with article 2372p-3 and does not add different or additional licensing requirements or bases for license revocation or suspension.[6]

Next, we address your questions about the use of assumed names by corporate sureties and their agents. Article 2372p-3 provides that a corporation is not eligible to be licensed as a bondsman unless "(1) it is chartered or admitted to do business in this state[] and (2) it is qualified to write fidelity, guaranty and surety bonds under the Texas Insurance Code."[7] In addition, courts have recognized that a corporation that acts as a surety on a bail bond is engaged in the business of insurance and is therefore required to obtain a certificate of authority from the Department of Insurance.[8] Business and Commerce Code chapter 36, which governs the use of assumed names, specifically excludes insurance companies from its scope: "The provisions of this chapter shall not apply to any insurance company as defined in Article 1.29 of the Insurance Code which is authorized

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[5]We have received a brief that contends that "a bail bond board has no authority under the Act to forbid former licensees from continuing to work in the bail bond business of a current licensee." The brief relies upon a statement in *Harris County Bail Bond Board v. Burns*, 881 S.W.2d 61 (Tex. App.--Houston [14th Dist.] 1994, writ denied), that "[t]he current state of the Act places no restrictions on past violators to continue working in the bail bond business," *id.* at 64. This statement ignores both *Stein* and article 2372p-3, section 9(b)(7) and, moreover, is clearly dicta. Furthermore, we believe that the statement is plainly contradicted by the court's subsequent holding in its opinion on motion for rehearing that "it [is] reasonable to use the list of reasons in section 9 as applicable not only to legal justifications for revoking or suspending a license but also as to legal justifications for refusing to renew a license," *id.* at 65. We do not find the *Burns* dicta on a bail bond board's authority to regulate licensees' business relationships persuasive and we decline to follow it.

[6]*See Austin v. Harris County Bail Bond Bd.*, 756 S.W.2d 65, 67-68 (Tex. App.--Houston [1st Dist.] 1988, writ denied) (citing *Bexar County Bail Bond Bd. v. Deckard*, 604 S.W.2d 214, 217 (Tex. Civ. App.--San Antonio 1980, no writ)).

[7]V.T.C.S. art. 2372p-3, § 3(d).

[8]*Klevenhagen v. International Fidelity Ins. Co.*, 861 S.W.2d 13, 16 (Tex. App.--Houston [1st Dist.] 1993, no writ); *Freedom, Inc. v. Texas*, 569 S.W.2d 48 (Tex. Civ. App.--Austin 1978, no writ); *see also* Attorney General Opinion MW-321 (1981).

to do business in this state except as such code shall specifically provide."[9] Insurance Code article 1.29 includes "fidelity, guaranty and surety companies" within its definition of "insurance company."[10] The commentary to the Business and Commerce Code chapter 36 provision excluding insurance companies states that "[t]he exclusion reflects the long-standing policy of the State Board of Insurance prohibiting the use of an assumed name by any company which does insurance business in Texas under authority of the Board except where otherwise provided by the Insurance Code."[11] Thus, a corporate bail bond licensee is not authorized to operate under an assumed name unless expressly authorized to do so by the Insurance Code or Department of Insurance regulations.

Article 2372p-3 requires each agent operating under a corporate power of attorney to obtain a separate license.[12] A person who is licensed under article 2372p-3 as an agent of a corporate surety is not licensed in his or her own right but rather is licensed merely as an agent for the corporation. *See* Attorney General Opinion DM-224 (1993) at 2. We believe the limitation on the authority of a corporate surety to operate under an assumed named embodied in Business and Commerce Code chapter 36 extends to those who are licensed as its corporate agents under article 2372p-3 when acting in that capacity.[13]

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[9]Bus. & Com. Code § 36.03.

[10]Ins. Code art. 1.29, § 1(b).

[11]Bus. & Com. Code § 36.03 (Comment of Bar Committee).

[12]V.T.C.S. art. 2372p-3, § 7(c).

[13]We have received a brief that asserts that an agent of a corporate surety may have numerous other business interests. While we conclude that an agent of a corporate surety is not authorized to use an assumed name when acting as agent for the corporate surety, we do not address the authority of such a person to use an assumed name for other business purposes or in other capacities.

SUMMARY

As a general matter, a county bail bond board does not have the authority to regulate bondsmen's use of assumed names. A bail bond board does have the authority to suspend or revoke the license of an individual bondsman who uses as an assumed name the name of an unlicensed person with whom the bondsman shares or pays commissions or fees. A court might approve a carefully crafted rule prohibiting such business relationships. A corporate bail bond licensee is not authorized to operate under an assumed name unless expressly authorized to do so by the Insurance Code or Department of Insurance regulations. This limitation on the authority of a corporate surety to operate under an assumed named extends to its licensed agents.

Yours very truly,

Mary R. Crouter
Assistant Attorney General
Opinion Committee