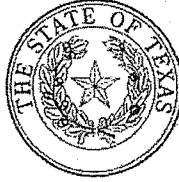


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SEP 14 2018

OPINION COMMITTEE



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TEXAS HOUSE OF REPRESENTATIVES
COMMITTEE ON BUSINESS & INDUSTRY

September 14, 2018

The Honorable Ken Paxton
Texas Attorney General
Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-48430-18

ID. # 48430

RQ-0250-KP

RE: Whether Chapter 1704, Texas Occupations Code, prohibits a jail or detention facility from using a third party contractor to provide jailed individuals information on available bail bond services.

Attorney General Paxton and the Opinion Committee:

Please consider this letter a formal request for an opinion on the matter of statutory prohibition of a bail bond surety or an agent of a bail bond surety to solicit business inside a county or local jail by providing informational signboards that allow access to bail agent information within the jail facility and under the control of the jail administration.

Section 1704.105(b), Texas Occupations Code, mandates that a list of licensed sureties be displayed where prisoners are held. In other states, custodial authorities have permitted or contracted with third parties for the posting of informational sign boards within the facilities. The preparation of these signboards may involve costs to, and the active participation of, licensed bail agents or associations of bail agents, and may involve the payment of fees from the third party contractor to the local governmental agency.

Bail bond boards in Texas have expressed concerns about individual jails using informational signboards due to a perceived solicitation prohibition in the Texas Occupations Code, Title 10, Chapter 1704, Subchapter G, Sec. 304, Prohibited Recommendations or Solicitations; Offense.

Sec. 1704.304 (c) reads as follows: *A bail bond surety or an agent of a bail bond surety may not solicit bonding business in a police station, jail, prison, detention facility, or other place of detainment for persons in the custody of law enforcement.*

It appears the above statute seems to run into constitutional issues raised by *Pruett v. Harris County Bail Bond* where the U.S. Court of Appeals, Fifth Circuit ruled in 2007 in favor of the plaintiffs.

Pruett was a case filed in 1983 by two bail bondsmen challenging the Texas Occ. Code 1704.109 claiming solicitation of potential customers was a denial of their First Amendment rights. The district court agreed, concluding that all but one of the restrictions violates the bondsmen's right to commercial speech.

Paul Workman • Nicole Collier • Jason Villalba • Jonathan Stickland • Ramon Romero, Jr.
Committee Clerk: Angelina Lopez
Angelina.Lopez_HC@house.texas.gov

The Honorable Ken Paxton and Opinion Committee

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I am, respectfully, seeking clarity on whether it is a violation of a third party operator's First Amendment rights to install and maintain an informational sign board in a detention facility.

Additionally, it is unclear whether 1704.304(c) speaks to informational signboards as a prohibited solicitation by a "bail bond surety or an agent of a bail bond surety" or do informational signboards merely constitute an informational resource for detainees?

We note that Texas opinions GA 1019, GA 0089 and GA 0381 address "exclusivity" of advertisements constituting a recommendation or a "short list" of preferred bail agents by facility administrators. Jail signboards do not recommend any particular bail agent or agents and all bail agents licensed to do business in the County have equal access to posting on the signboards.

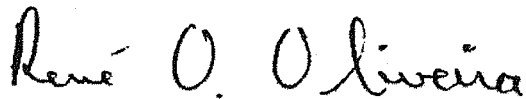
The California Department of Insurance issued an opinion on the matter on February 16, 2001 stating in part: "...*The Insurance Commissioner is mindful of the fact that the jail signboards at issue serve an important and fundamental function in the criminal justice system. Many defendants are unaware of their bail rights and the process for obtaining bail. The signboards contain basic information that will assist them in this regard.*"

The opinion further states the following: "*As long as bail licensees have substantially equal access to posting on the signboards, so as not to provide an advantage to or disadvantage any one licensee or group of licensees, and as long as the local governmental agencies reasonably control the content and the administrative process for preparation of the signboards, the determination as to whether the signboards comport the effective and orderly administration should be left to the cities and counties.*"

Thank you for your consideration and deliberations in this matter regarding statutes related to regulating bail bond sureties and sureties' rights to free speech.

Please feel free to contact me for any questions.

Sincerely,



René O. Oliveira
State Representative
District 37