



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL,  
ATTORNEY GENERAL**

December 19, 1975

The Honorable Oscar B. McInnis  
Criminal District Attorney  
Hidalgo County  
Edinburg, Texas

Opinion No. H-751

Re: Whether a sheriff's bond  
would cover shortages in the  
cash bonds and fines paid the  
sheriff and his deputies.

Dear Mr. McInnis:

You have requested our opinion concerning the liability of a sheriff and his bonding company for shortages of fines and cash bonds paid to jailers working under the sheriff's supervision. You also ask whether the answer to your first question would be different if the prisoner was arrested by some agency other than the sheriff's office.

Article 6870, V.T.C.S., provides:

Sheriffs shall be responsible for the official acts of their deputies, and they shall have power to require from their deputies bond and security; and they shall have the same remedies against their deputies and sureties as any person can have against a sheriff and his sureties.

See also V.T.C.S. art. 5116. Under these statutes a sheriff and his surety have been held liable for the malfeasance of deputies performing official acts. Bracken v. Cato, 54 F.2d 457 (5th Cir. 1931); Rich v. Graybar Electric Co., 84 S.W.2d 708 (Tex. Sup. 1935); see also Aetna Casualty & Surety Co. v. Clark, 150 S.W.2d 78 (Tex. Sup. 1941).

The collection of bail bonds and fines is clearly an official act. Code Crim. Proc. arts. 17.20, 17.21; Attorney General Opinions H-183 (1973), WW-1326 (1962), V-1548 (1952). Accordingly, in our opinion the sheriff would be liable under article 6870 for the misappropriation of these funds by his deputies. See Attorney General Opinion H-360 (1974).

Article 6866, V.T.C.S., provides:

Every person elected to the office of sheriff shall, before entering upon the duties of his office, give a bond. . .conditioned that he will account for and pay over to the persons authorized by Law to receive the same, all fines, forfeitures and penalties that he may collect for the use of the State or any county, . . . and that he will faithfully perform all such duties as may be required of him by Law. . . .

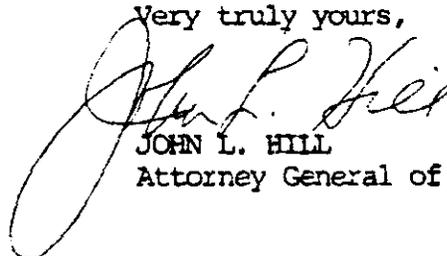
Concerning the liability of the bonding company, the general rule is that "[i]n order to hold such a surety, there must be a violation of the condition of the bond." Aetna Casualty & Surety Co. v. Clark, supra at 80. Since the accounting for fines is an express condition of the bond, and since the accounting for bail bonds is a duty required of sheriffs by law and thus also a condition of the bond, in our opinion the surety would be liable for the failure of the sheriff to account for these funds whether or not the failure to account is due to a deputy.

Your second question is whether we would reach the same result as to bail bonds if the prisoner were arrested by an agency other than the sheriff's office. Since the nature of the collection of bail bonds as an official duty of the sheriff is not dependent upon his having arrested the prisoner, in our opinion the result remains the same where he has not.

#### S U M M A R Y

Without regard to the person arresting the prisoner, a sheriff and his surety are liable for the misappropriation of fines and bail bonds collected by a deputy sheriff.

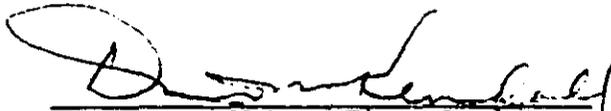
Very truly yours,

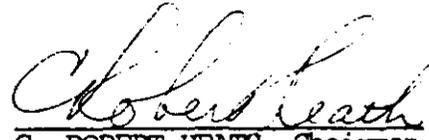


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APPROVED:

  
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