



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

November 17, 1988

Honorable Stephen C. Howard
Orange County Attorney
Orange Courthouse
Orange, Texas 77630

LO-88-127

Dear Mr. Howard:

Because of the tremendous increase in the volume of requests for opinions and open records decisions, we are responding to your request with the enclosed Letter Opinion or Open Records Ruling. A Letter Opinion or Open Records Ruling has the same force and effect as a formal Attorney General Opinion or Open Records Decision, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent Letter Opinion or Open Records Ruling, a formal Attorney General Opinion or Open Records Decision, or a decision of a court of record.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox".

J I M M A T T O X
Attorney General of Texas

JAM/bc
Enclosure



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Dear Mr. Howard:

You ask several questions about the bail bond business of a newly elected county commissioner. You first ask whether a newly elected county commissioner may continue to make bail bonds until the date he takes office. In Attorney General Opinion JM-927 (1988), it was noted that when a county commissioner acts as a surety on a bail bond he enters into a contract making the county beneficiary if the principal fails to perform. The opinion concluded that the commissioner's oath of office prohibits him from entering into a contract in which he and the county he serves have an interest. See Attorney General Opinion JM-855 (1988).

Subsection (a) of section 81.002 of the Local Government Code provides in pertinent part:

Before undertaking the duties of the county judge or a county commissioner, a person must take the official oath and swear in writing that the person will not be interested, directly or indirectly, in a contract with or claim against the county. . . .

Until such time as the person qualifies as a county commissioner by taking the oath and executing the bond required by section 81.002 the oath would not prohibit him from making bonds in which the county might have an interest. However, once the individual qualifies as a county commissioner, he violates his oath if he makes bail bonds. He also commits a penal offense if he "participates in a vote or decision on a matter involving a business entity in which the official has a substantial interest if it is reasonably foreseeable that an action on the matter

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would confer an economic benefit on the business entity." Local Gov't Code § 171.003 (emphasis added). See Local Government Code § 171.002 for definitions of "substantial interest in a business entity."

You next ask whether the newly elected commissioner may continue to direct or manage the bonding company "where he formally has transferred the company to his son and where his name no longer appears on bonds." The oath the commissioner takes pursuant to section 81.002 prohibits him from being interested, directly or indirectly, in a contract with or claim against the county. The oath is such that even if the interest is negligible the commissioners "must avoid all situations which result in their personal pecuniary gain at the expense of the county." Attorney General Opinion H-624 (1975). Whether the commissioner has an interest in the situation you ask about is a fact question that this office cannot resolve.

With regard to your question about the son making bonds if the commissioner has no interest or participation in the business, sections 171.002 and 171.003 would appear to be dispositive. As heretofore noted, section 171.003 makes it an offense if a local public official knowingly "participates in a vote or discussion involving a business entity in which the official has a substantial interest." Section 171.002(c) defines substantial interest as follows:

A local public official is considered to have a substantial interest under this section if a person related to the official within the second degree by consanguinity or affinity has a substantial interest under this section.

In your final question you ask whether the commissioner may make bail bonds for offenses occurring outside the county. The execution of a bond for an offense occurring outside the county, standing alone, would not appear to be violative of the commissioner's oath since the county would not have an interest in any contractual agreement arising because of the bond. However, this does not preclude the possibility that the commissioner might have a contractual interest, direct or indirect, with the county as a result of

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a bail bond business located in the county. See generally
article 2372p-3, V.T.C.S. Again, whether such an interest
exists is a fact question that this office cannot resolve.

Very truly yours,



Tom G. Davis
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk, Chief
Letter Opinion Section

TGD/SW/bc

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