



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 4, 1997

The Honorable Tim Curry
Criminal District Attorney
Tarrant County Justice Center
401 West Belknap
Fort Worth, Texas 76196-0201

Letter Opinion No. 97-102

Re: Whether a county bail-bond board may require an applicant or a renewing licensee to provide either title insurance or a title opinion if the applicant or licensee uses real property to secure the payment of any bail-bond obligation the applicant or licensee may incur (ID# 39621)

Dear Mr. Curry:

With respect to real property that an individual applicant for a bail-bond license or a licensee seeking to renew his or her bail-bond license (together, an "applicant")¹ intends to convey as security for bail-bond obligations, article 2372p-3, V.T.C.S., authorizes a county bail-bond board to require only two things of the applicant: that the applicant list the property in his or her application; and that the applicant execute in trust to the board a deed to the property. A bail-bond board may not impose a requirement that differs from or supplements the statutory requirements. You ask whether a bail-bond board may require an individual applicant to procure either a title opinion² or title insurance³ when the applicant pledges real property to secure future bail-bond obligations. We believe such a requirement would add to the statutory burdens, and we consequently conclude that the board may not.

¹We assume you ask solely about requirements a bail-bond board may make of an individual, not a corporate, applicant for a bail-bond license. Only an individual may use real property to secure future bond obligations. See V.T.C.S. art. 2372p-3, § 6(f)(3); Attorney General Opinion DM-264 (1993) at 2-3. Additionally, a board is unauthorized to determine the financial responsibility of a corporate applicant. V.T.C.S. art. 2372p-3, § 3(d); see also Attorney General Opinion DM-264 (1993) at 3. We limit our discussion and conclusions accordingly.

²A title opinion is a professional opinion, generally given by an attorney but sometimes given by an abstractor, see 1 C.J.S. *Abstracts of Title* § 10(c), at 374 (1985), regarding the legal effect on title to real property of facts or instruments currently noted in the abstract. See *id.* § 10(a), at 373. An abstract of title summarizes those documents and facts apparent from the public records that affect real property. *Matthews v. Caldwell*, 241 S.W. 798, 800 (Tex. Civ. App.—El Paso 1922), *rev'd on other grounds*, 258 S.W. 810 (Tex. Comm'n App. 1924, holding approved); see *Hollifield v. Landrum*, 71 S.W. 979, 982 (Tex. Civ. App. 1903, no writ). See generally 1 C.J.S. *Abstracts of Title* §§ 2, 4(b) (1985).

³Title insurance indemnifies the insured against any unknown liens, encumbrances, or title defects, existing at the time the policy is issued, that might cause a defect or failure of title. *Stewart Title Guar. Co. v. Cheatham*, 764 S.W.2d 315, 318-19 (Tex. App.—Texarkana 1988, writ denied).

We begin our analysis by reviewing the relevant law. Article 2372p-3, V.T.C.S., creates a county bail-bond board in a county (such as yours) with a population higher than 110,000.⁴ Anyone who wishes to operate as a bondsman in any court of the county must first obtain a license from the county bail-bond board.⁵ The county bail-bond board may license only an applicant who, among other things, "possesses sufficient financial resources to" indemnify any loss on the obligations he or she may undertake as a bondsman. "Sufficient financial resources" may include real property the applicant intends to convey in trust to the board as collateral securing future bail-bond obligations.⁶

In our opinion, a bail-bond board lacks authority to require an applicant to procure a title opinion or title insurance, even though, as you suggest, such a requirement may assist the board in weighing the sufficiency of the applicant's financial resources.⁷ A bail-bond board may not impose requirements for obtaining a bondsman's license that differ from or add to the statutory requirements.⁸ This office previously has determined that article 2372p-3 imposes only two requirements with respect to real property that an applicant intends to convey as security for bail bonds:⁹

1. "[T]he applicant must list the property in his or her application for the license."¹⁰

⁴V.T.C.S. art. 2372p-3, § 5(a). Tarrant County has a population of 1,170,103; see Bureau of the Census, U.S. Dep't of Commerce, 1990 Census of Population: General Characteristics: Texas 4 (1992).

⁵V.T.C.S. art. 2372p-3, § 6(a).

⁶*Id.* § 6(f)(1), (2).

⁷See *id.* § 3(b); see also *id.* § 3(c). For purposes of this opinion, we assume without deciding that a title opinion or title insurance is relevant to the board's consideration of an applicant's financial ability to indemnify future forfeited bail bonds. You suggest in your letter to this office that a bail-bond board's rule requiring an applicant to obtain either title insurance or a title opinion when the applicant seeks to secure any future bond obligations with real property would provide greater certainty to the board that the applicant is financially responsible:

The purpose of a title opinion or title insurance requirement would be to provide greater assurance of value when real property is pledged to the bail bond board as collateral under [V.T.C.S. article] 2372p-3, [section] 6(a)(4). Currently, the board has no way of knowing whether the title to land is generally free of liens (besides property-tax liens . . .), other than the assurances of an applicant. A title opinion from an abstractor or attorney would provide independent assurance of current status, and a title policy would further insure the board's collateral against encumbrances.

⁸*Dallas County Bail Bond Bd. v. Stein*, 771 S.W.2d 577, 580 (Tex. App.—Dallas 1989, writ denied); Attorney General Opinion DM-264 (1993) at 4.

⁹Attorney General Opinion DM-264 (1993) at 4-5.

¹⁰*Id.* at 5 (citing V.T.C.S. art. 2372p-3, § 6(a)(4)).

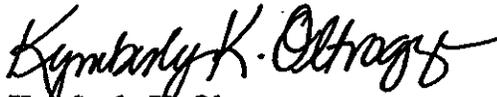
2. After the applicant has received notice that the bail-bond board has tentatively approved the application, he or she must “execute in trust to the board deeds to the property listed by the applicant”¹¹

An applicant who has complied with these requirements has “produced sufficient security to qualify for a bondsman license, and the bail-bond board has no authority to require further proof that the security is adequate.”¹² In Attorney General Opinion DM-264, for example, we concluded that a bail-bond board may not question the real property’s appraisal value or obtain an independent evaluation of the real property offered in trust.¹³ Likewise, we conclude here that requiring an applicant to procure a title opinion or title insurance is beyond the two items required by statute. Of course, a bail-bond board, as holder of a deed of trust, may sue any licensee who takes an action that threatens the value of the board’s security.¹⁴

S U M M A R Y

A county bail-bond board may not require an individual applicant for a bondsman’s license to procure either a title opinion or title insurance for any real property the individual will convey in trust to the board to secure future bond forfeitures.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

¹¹*Id.* (quoting V.T.C.S. art. 2372p-3, § 6(f)(2)) (emphasis deleted).

¹²*Id.* at 5.

¹³*Id.* at 4.

¹⁴*See Taylor v. Brennan*, 605 S.W.2d 657, 658 (Tex. Civ. App.—Houston [1st Dist.] 1980), *aff’d in relevant part*, 621 S.W.2d 592 (Tex. 1981); *Wheeler v. Peterson*, 331 S.W.2d 81, 83 (Tex. Civ. App.—Fort Worth 1959, writ *dism’d w.o.j.*); *Brader v. Ellinghausen*, 154 S.W.2d 662, 665 (Tex. Civ. App.—Fort Worth 1941, no writ).