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MJ



September 11, 1991

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**CERTIFIED MAIL
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Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

RECEIVED
SEP 17 91
Opinion Committee

Attention: Madeleine B. Johnson
Chairman, Opinion Committee

**RE: 1. IS THE PRE-TRIAL SERVICES AGENCY
OF HARRIS COUNTY PERMITTED BY LAW TO HOLD
JEWELRY AND OTHER PERSONAL PROPERTY AS
ADDITIONAL SECURITY FOR A PERSONAL BOND, IF THE
ADDITIONAL SECURITY IS ORDERED BY THE DISTRICT
COURT?**

**2. IF SO, WHERE SHOULD SUCH PERSONAL
PROPERTY BE HELD AND STORED BY THE PRE-TRIAL
SERVICES AGENCY OF HARRIS COUNTY?**

Dear Sir:

The Harris County Pre-trial Services Agency has asked the advice of this office on several matters and, as a result of their inquiries, the above-referenced issues have been raised.

**ACCOMPANIED BY ENCLOSURES --
FILED SEPARATELY**

First Assistant: Marsha L. Floyd • Bureau Chiefs: ¹James E. McKnight, Admin. Services, Jerry B. Schank,
David R. Hurley • Division Chiefs: Dori A. Wind, Harold M. Streicher, Russell L. Drake, Mary J. McKerall,
Donald W. Jackson, Rock W. A. Owens, Frank E. Sanders, Richard S. Hill

Please furnish us with your opinion on the issues presented.
A Memorandum Brief is enclosed.

Sincerely,

MIKE DRISCOLL
County Attorney

A handwritten signature in cursive script, appearing to read "Roberta Lloyd Fremaux". The signature is written in black ink and is positioned above the typed name of the signatory.

By Roberta Lloyd Fremaux
Assistant County Attorney

MD:RLF
Enclosure

MEMORANDUM BRIEF

1. IS THE PRE-TRIAL SERVICES AGENCY OF HARRIS COUNTY PERMITTED BY LAW TO HOLD JEWELRY AND OTHER PERSONAL PROPERTY AS ADDITIONAL SECURITY FOR A PERSONAL BOND, IF THE ADDITIONAL SECURITY IS ORDERED BY THE DISTRICT COURT?

2. IF SO, WHERE SHOULD SUCH PERSONAL PROPERTY BE HELD AND STORED BY THE PRE-TRIAL SERVICES AGENCY OF HARRIS COUNTY?

As defined by Tex. Code Crim. Proc. Ann. art. 17.01, (Vernon 1977) "bail" is the security given by the accused that he will appear and answer before the proper court the accusation brought against him, and includes a bail bond or a personal bond. It is well settled that the primary purpose of bail is to secure the presence of the accused for trial.

Tex. Code Crim. Proc. Ann. art. 17.02 (Vernon 1977) defines a "bail bond" as:

"...[a] written undertaking entered into by the defendant and his sureties for the appearance of the principal therein before some court or magistrate to answer a criminal accusation; provided, however, that the defendant upon execution of such bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same. Any cash funds deposited under this Article shall be receipted for by the officer receiving the same and shall be refunded to the defendant if and when the defendant complies with the conditions of his bond, and upon order of the court."

With regard to a personal bond, Tex. Code. Crim. Proc. Ann. art. 17.03 (Vernon Supp. 1991) provides that:

"...[a] magistrate may, in the magistrate's discretion, release the defendant on his personal bond without sureties or other security." (emphasis added)

This is true except in certain limited circumstances.¹ In those limited circumstances, a personal bond is not completely barred, rather, only the court before whom the case is pending may release the defendant on a personal bond.

Tex. Code Crim. Proc. Ann. art. 17.04 (Vernon Supp. 1991) sets forth the requisites for a personal bond which are basically those requirements for a bail bond that are set forth in art. 17.08 of the above Code except that no sureties are required.² In addition to those conditions required for a bail bond, a personal bond must also contain the following:

1. The defendant's name, address, and place of employment;
2. Identification information, including the defendant's:

¹ Those limited circumstances include certain aggravated crimes and those cases where the court has required the defendant, as a condition of his personal bond, to submit to testing for alcohol or controlled substances and participate in alcohol or drug abuse treatment or education, and the defendant either refuses to submit to a test for the presence of controlled substances in his system, or submits to such a test and said test shows evidence of such a controlled substance being in the defendant's system. It should be noted that the court must determine that this requirement of testing and/or treatment will serve to reasonably assure the appearance of the defendant for trial before the court may order it to be a condition of the personal bond.

² The statutory requisites for a bail bond are: (1) that it be made payable to "The State of Texas"; (2) That the defendant and his sureties, if any, bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him; (3) If the defendant is charged with a felony, that it state that he is charged with a felony or likewise if he is charged with a misdemeanor; (4) That the bond be signed by name or mark by the principal and sureties, if any, each of whom shall write thereon his mailing address; (5) That the bond state the time and place, when and where the accused binds himself to appear and the court or magistrate before whom he is to appear as well as binding the defendant to appear before any court where his presence is required under the Code of Criminal Procedure or by any particular court or magistrate; and (6) The bond shall also be conditioned that the principal and sureties, if any, will pay all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in rearresting the principal in the event he fails to appear before the court or magistrate named in the bond at the time stated therein.

- (a) date and place of birth,
- (b) height, weight, and color of hair and eyes,
- (c) driver's license number and state of issuance, if any; and
- (d) the nearest relative's name and address, if any; and

3. The following oath sworn to and signed by the defendant:

"I swear that I will appear before (court or magistrate) at (address, city, county), Texas, on the (date), at the hour of (time, a.m. or p.m.) or upon notice by the court, or pay to the court the principal sum of (amount) plus all necessary and reasonable expenses incurred in any arrest for failure to appear."

It would appear that the major difference between a bail bond and a personal bond is that the former generally requires the pledging of collateral, by the defendant and his surety, and the latter requires no pledge of collateral and is akin to a release on one's own recognizance, i.e., the defendant is released based upon his promise to return for his court appearances.

1. IS THE PRE-TRIAL SERVICES AGENCY OF HARRIS COUNTY PERMITTED BY LAW TO HOLD JEWELRY AND OTHER PERSONAL PROPERTY AS ADDITIONAL SECURITY FOR A PERSONAL BOND, IF THE ADDITIONAL SECURITY IS ORDERED BY THE DISTRICT COURT?

The first question presented is whether the Pre-Trial Services Agency of Harris County is permitted by law to hold jewelry and other personal property as additional security for a personal bond, if the additional security is ordered by the district court. For example, may Pre-Trial Services hold the defendant's diamond ring, if such action is required by the district court before the defendant may be released on a personal bond? May Pre-Trial Services hold the title to the defendant's vehicle, the title to the defendant's boat, the license plates from the defendant's vehicle, the stock to a closely-held corporation, or even sums of money as additional security that is a condition precedent to the defendant being released on a personal bond? Finally, may Pre-Trial Services hold additional security pledged as a condition precedent to a personal bond when the additional security is the property of a third person, who has pledged same on behalf of the defendant?

The process of reviewing defendants for the possibility of the issuance of a personal bond is the responsibility of the personal bond office which is authorized and established by Texas law.³ The purpose of this office is to gather and review information about an accused which may have a bearing on whether he will comply with the conditions of a personal bond. The office is required to report its findings to the court before which the case is pending.⁴ If a defendant is released on a personal bond based on the recommendation of the personal bond office, than the court is required to assess a personal bond fee of \$20 or 3% of the amount of bail fixed for the accused, whichever is greater. This fee is to be used to fund the personal bond office. From a review of the applicable statutes, it would appear that the personal bond office continues to monitor the defendant, who is released on a personal bond, during the pendency of his court proceedings.

Under Texas law, the release of a defendant on a personal bond is completely within the discretion of the magistrate. Arguably, since the personal bond is issued in the discretion of the magistrate, in turn, the magistrate is impliedly authorized to set conditions on the personal bond that he believes are reasonable and necessary to assure the defendant's appearance at his trial. Texas law specifically authorizes a magistrate to condition a defendant's release on bond on the defendant agreeing to submit to home confinement and electronic monitoring under the supervision of an agency designated by the magistrate;⁵ agreeing to test on a weekly basis for the presence of a controlled substance in the defendant's body;⁶ and agreeing to receive counselling and/or education relating

³ Tex. Code of Crim. Proc. Ann. art. 17.42 (Vernon Supp. 1991)

⁴ While the predecessor to this article, i.e., Art. 2372p-1 (Vernon's Ann.Civ.St.) has been repealed as a result of the enactment of this article, a review of same provides some insight to the duties of the office. It provided: "Likewise, for the purpose of providing the judge before whom a criminal case is pending the information necessary for making a proper determination as to whether or not the accused should be released on personal bond as authorized by Article 17.03, Code of Criminal Procedure, 1965, the commissioners court of any such county any contract with such above named entity to interview the accused, to verify the information given, to make the appropriate recommendation as to release to the judge of the court where the case is pending, and, if the accused is released on his personal bond, to assure the judge of the court that such entity will assist in securing the presence of the accused at his trial."

⁵ Tex. Code of Crim. Proc. Ann. art.s 17.42 and 17.43 (Vernon Supp. 1991)

to acquired immune deficiency syndrome or human immunodeficiency virus.⁷ It appears from a reading of the statutes that authorize the imposition of these conditions that they [the statutes] do not differentiate between a bail bond and a personal bond with regard to the applicability of these conditions as the statutes merely refer to their potential as conditions of "bond" without specifying whether they refer to a bail bond or a personal bond. Consequently, there does appear to be statutory authority allowing magistrates to impose certain specific conditions on the bond of a defendant.

Thus, the next logical question is whether a magistrate's discretion to impose certain specific conditions impliedly authorizes the magistrate to impose other conditions on the personal bond, including the requirement of the pledging of additional collateral as a condition of the personal bond. A careful review of the applicable statutes does not reveal a specific authorization for a magistrate to require a defendant to pledge collateral as a condition of his release on a personal bond. It could be argued that to do so appears to be in direct contradiction of the spirit for which the personal bond was created. The traditional use of a personal bond has generally been to facilitate the release of those defendants who have significant ties to the community and who are likely to appear in court as scheduled but, because of financial circumstances, are unable to make the bail set in their case. This was explained in the Special Commentary by Hon. John F. Onion, Jr. to Tex. Code Crim. Proc. Ann. art. 17.04 (Vernon 1977), wherein he stated:

"An innovation in the new Code permits the court in its discretion to release a defendant on his personal bond without sureties or other security. The requisites of such bond set forth in Art. 17.04 (among other things), call for the bond to reflect the defendant's name, address and place of employment as well as his oath that he will appear as ordered or pay amount of bond plus expenses of arrest. There are those defendants with ties to the community such as a family, a job, etc., but who do not have sufficient funds for a bailbondsman, corporate surety, nor friends with sufficient property to qualify as sureties under Art. 17.13. The amendment was designed to allow such

⁶ Id.

⁷ Id. Also, the court may impose conditions on a defendant who is charged with certain crimes and the crime was committed against a child who is 12 years of age or younger. See, Tex. Code of Crim. Proc. Ann. art. 17.41 (Vernon Supp. 1991)

defendant to be released on a personal bond and to return to his family and his job pending trial."⁸

Utilization of the personal bond has become particularly attractive in light of the jail overcrowding that exists in the Harris County Jail.

While there is no general grant of authority to require collateral with a personal bond, neither is there any specific restriction in the statutes that forbids such a condition being set by the court. And, since the defendant's release on a personal bond is completely within the discretion of the court, the court may impliedly have the authority to impose those conditions on the personal bond that it believes are necessary and reasonable, including, arguably, personal property and/or amounts of money which are less than those amounts required for the bail bond. Finally, since the personal bond office (in this case, Pre-Trial Services of Harris County) appears to be the administrator of the personal bond releases, logically it could be argued that they are indeed authorized to hold any additional security pledged as a condition of a personal bond.

2. IF SO, WHERE SHOULD SUCH PERSONAL PROPERTY BE HELD AND STORED BY THE PRE-TRIAL SERVICES AGENCY OF HARRIS COUNTY?

A thorough review of the statutory language authorizing the creation of a personal bond office does not reveal any specific authority for said office to hold additional security, if any, that is pledged in support of a personal bond. However, in that the release of a defendant on a personal bond appears to be the exclusive arena of the personal bond office, it could be argued that any collateral that is ordered as a condition by the court for the issuance of a personal bond should be held exclusively by the personal bond office until such time as the defendant has fulfilled the obligations of the personal bond, namely, to appear in court.

A review of the applicable statutes does reveal that the sheriff, or other peace officer, is specifically given the authority to take a bail bond from the defendant (or his sureties) in both misdemeanor and felony cases pursuant to Tex. Code of Crim. Proc. Ann. art.s 17.20, 17.21 and 17.22 (Vernon 1977). Arguably, since they are already charged with the responsibility of holding bail

⁸ See also, Interpretative Commentary by Hon. W.A. Morrison to Tex. Code of Crim. Proc. Ann. art. 17.01 (Vernon 1977).

bonds, the appropriate person to hold the collateral on a personal bond would be the sheriff or other peace officer.

Finally, in that the act of releasing a defendant on a personal bond is in the complete discretion of the magistrate involved, it could be argued that the clerk of that magistrate's court should be required to hold those items that are pledged as additional security for the personal bond. This would appear to be the more efficient solution to any holding/storage problems, particularly in cases where the additional security is non-monetary, personal property as the clerks have safes and/or safety deposit boxes at their disposal in which the non-monetary collateral could be held and further, the clerk and his deputies are bonded. Neither of these factors are present in the case of the personal bond office.