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Opinion Committee

August 1, 1997

Hon. Dan Morales
Texas Attorney General
P.O. Box 12548
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FILE # ML-39713-97

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RA-968

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AUG 04 1997

OPEN RECORDS DIVISION

Re: Request for Attorney General's opinion

Dear Sir:

I am requesting an opinion regarding the authority of a county sheriff with respect to approving bail bonds posted by an attorney.

The Sheriff of Bell County has expressed a concern about one attorney who has approximately \$300,000 in outstanding bonds on file (and about \$7,000 in judgments nisi), and is continuing to execute additional bonds. I am unable to provide guidelines for him as to his authority to determine and require sufficient evidence of security with respect to attorney bail bonds.

Under Section 3(e), Article 2372p-3, Tex.Rev.Civ.Stat. Ann. (Vernon Supp. 1997), a licensed attorney may execute bail bonds or act as a surety for a person he or she actually represents in a criminal case, and need not be licensed as a bondsman. However, although exempt from licensing requirements under Article 2372p-3, the attorney is prohibited from engaging in those practices listed in the statute that can be made the basis for revocation of the license of a bondsman. Among the prohibited practices in Section 9 of Article 2372p-3 are conviction of a felony or crime of moral turpitude, "becoming insolvent," "failing to pay within 30 days any final judgment rendered on any forfeited bond in any court of competent jurisdiction within the county," and "on more than one occasion failing to maintain the minimum amount of security required by [Article 2372p-3] or misrepresenting to any official or employee of the official the limit supported by the amount of security to obtain the release of any person on bond." If the sheriff finds that the attorney has violated any of these terms that would be the basis for revocation of a bondsman's license, the attorney does not qualify for the bond license exception, and may not execute a bond or act as surety for a criminal client "unless and until" the attorney comes into compliance with the statute. See Sec. 3(e), Art. 2372p-3.

Article 17.11, Code of Criminal Procedure, requires the sheriff to examine evidence of the sufficiency of security offered. A surety is sufficient if he can establish that he is worth at least double the amount of the bond, exclusive of exempt property and outstanding debts and other encumbrances. Article 17.14 gives the sheriff the discretion to require "further evidence" of the sufficiency of a security before approving the bond. However, where a bail bond board is in existence in a county, the provisions of Article 2372p-3 override those of Article 17.14 with

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respect to establishing the solvency of a licensed bondsman, and the sheriff does not have the discretion to demand proof of solvency of a licensed bondsman. *Font v. Carr*, 867 S.W.2d 873 (Tex.App.-Houston [1st Dist.] 1993, *dism'd w.o.j.*).

Since attorneys are not subject to the authority of a bail bond board, it would appear that a sheriff, if not "fully satisfied," retains his discretion to refuse a bond by an attorney where there is a violation of some condition listed in Section 9, Article 2372p-3, or require "further evidence" of solvency under Article 17.14 as it applies to attorney bonds. Not being "fully satisfied" is probably encumbered with a requirement that such mental state be based on reliable information that reasonably supports the sheriff's conclusion as to a possible violation of a Section 9 condition and the subsequent exercise of his discretion under Article 17.14.

It would appear that if the Bail Bond Act exempts attorneys from most of its provisions (other than compliance with Section 9), and if a sheriff has reliable information to support a conclusion that security is not sufficient, a sheriff may require of an attorney an affidavit of sufficiency of security as provided for in Article 17.13, Code of Criminal Procedure. However, although such affidavit is not "conclusive as to the sufficiency of the security," a sheriff may not require an attorney to post any collateral. *Minton v. Frank*, 543 S.W.2d 442 (Tex. 1976).

If the above is a correct summary of the law, then the only question remaining is what constitutes sufficient security with respect to approving an attorney bond, and what authority a sheriff has to require verification from an attorney of that sufficiency, assuming that there is no unfettered right of an attorney to post bonds regardless of sufficiency.

Since the Bail Bond Act specifically prohibits attorneys from violating the same conditions in Section 9, Article 2372p-3, that can provide the basis for revocation of a bondsman's license (including maintaining "the minimum amount of security required" by Article 2372p-3), although exempt from other provisions of the statute, one approach might rely on a presumption that "sufficiency" is measured in the same manner as it is for licensed bondsmen. Under Section 6 of the Act, where a county has less than 250,000 population by the most recent federal census, a minimum of \$10,000 in cash or property is required to be posted by the bondsman, and the bondsman may write bonds totaling no more than ten times the collateral posted. Also, a bondsman may not have judgments nisi that exceed two times that amount. If that is the criteria applicable to attorneys, then if an attorney has \$300,000 in outstanding bonds, the sheriff could require the attorney to submit an affidavit swearing to at least \$30,000 in worth, and could refuse to accept any further bonds from that attorney absent a subsequent affidavit alleging greater worth on a 1:10 ratio.

However, if an attorney is exempt from Article 2372p-3 with regard to its requirements for what worth is required in order to write bonds, the attorney would apparently then have to meet the requirements of Article 17.11, Code of Criminal Procedure, with its requirement that a surety be worth at least double the amount of the sum for which he is bound, exclusive of exempt

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property and debts. In such case, an attorney with \$300,000 in outstanding bonds would have to establish a worth of \$600,000.

Legal guidance is needed for the following questions:

1. Under what situations, if any, does a sheriff have the discretion to refuse to accept a bail bond executed by an attorney or where an attorney is a surety for a criminal client?

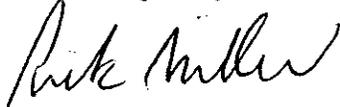
2. Is the authority of an attorney unfettered as to the total amount of bail bonds that he or she can execute, or is an attorney subject to a requirement that any security be "sufficient" in terms of Article 17.11, CCP, and Article 2372p-3?

3. If the bail bond executed by an attorney must be "sufficient," what formula does the sheriff use to determine the total amount of bonds that an attorney may execute?

4. If there is a formula for determining the sufficiency of security for bonds executed by an attorney, what legal discretion does the sheriff have and to what extent may he go to require verification of the attorney's worth for bail bond purposes?

Thank you for your attention to this request. Should you require additional information, please contact me.

Yours very truly,



Rick Miller
Bell County Attorney