



JOHNSON COUNTY

BILL MOORE
COUNTY ATTORNEY

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Opinion Committee

February 23, 1998

Honorable Sarah J. Shirley, Chairperson
Opinion Committee
Attorney General's Office
P.O. Box 12546
Austin, Texas 78711

RO-1100 FILE # ML-40113-98
I.D.# 40113

RE: Request for an Attorney General's opinion concerning whether it is in the discretion of a County Sheriff to require attorneys and/or bail bondsmen, in a county which does not have a bail bond board, and is not statutorily required to have a bail bond board, to convey property (in trust or otherwise) to the Sheriff, the Treasurer, or the County in order to execute bail bonds.

Dear Ms. Shirley:

I am writing to request an Attorney General's opinion interpreting V.A.T.C.S. Article 2372-p3 (Bail Bond Act), Article 17.11 V.A.C.C.P., Article 17.13 V.A.C.C.P., and Article 17.14 V.A.C.C.P. as applied to the question of whether the County Sheriff may require that attorneys and non-attorney bail bondsmen convey property (in trust or otherwise) to the Sheriff, the Treasurer, or the County in order to execute bail bonds.

If the Sheriff may require the conveyance of property, what are the limits on the discretion of the Sheriff in determining whether the property may be personal property of a specific type or real property?

If the Sheriff may require the conveyance of property, what are the limits on the discretion of the Sheriff in determining or limiting the location of the property to Johnson County as opposed to anywhere in the State of Texas or the United States?

The Sheriff of Johnson County has requested that the County Attorneys Office submit this request for an Attorney General's Opinion.

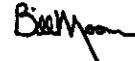
Question

Does the Sheriff's discretion pursuant to V.A.T.C.S. Article 2372-p3 (Bail Bond Act), Article 17.11 V.A.C.C.P., Article 17.13 V.A.C.C.P., Article 17.14 V.A.C.C.P. permit him to require that bail bondsmen and/or attorneys executing bonds on behalf of clients that the attorney represents transfer real and/or personal property, whether in trust or otherwise, to the Sheriff, the Treasurer or Johnson County.

I have enclosed a copy of the brief prepared in relation to the foregoing question.

I would appreciate an answer to this question as soon as possible.

Sincerely,



Bill Moore

enclosure: Brief

CC: Bob Alford, Sheriff
File

BRIEF

QUESTION: Does the Sheriff's discretion pursuant to V.A.T.C.S. Article 2372-p3 (Bail Bond Act), Article 17.11 V.A.C.C.P., Article 17.13 V.A.C.C.P., Article 17.14 V.A.C.C.P. permit him to require that bail bondsmen and/or attorneys executing bonds on behalf of clients that the attorney represents transfer real and/or personal property, whether in trust or otherwise to the Sheriff, the Treasurer or Johnson County.

FACTUAL BACKGROUND

Johnson County has a population of less than 110,000 people according to the last federal census, therefore Johnson County is not required to establish a bail bond board pursuant to V.A.T.C.S. Article 2372-p3 (Bail Bond Act). Further, Johnson County has not exercised the option of counties with a population less than 110,000 people to establish a bail bond board pursuant to the procedures set out in V.A.T.C.S. Article 2372-p3. The Sheriff seeks to require attorneys and bail bondsmen (hereinafter referred to as "sureties") to convey some type of collateral to the County, the Treasurer or the Sheriff in order to secure the bail bonds of the attorneys or bondsmen.

The Sheriff seeks to have the sureties convey (in trust or otherwise) real estate, certificates of deposit, or other collateral or financial instruments as security to be held by the County, Treasurer, or Sheriff. The attorney or bondsman would be able to write bonds for some multiple of the amount of the collateral or security. The Sheriff would establish the formula or multiple which would determine the attorney's or bondsman's maximum liability per bond and for the total bonds upon which the surety could be liable.

STATUTES IN QUESTION

V.A.T.C.S. Article 2372-p3 (Bail Bond Act),
Article 17.11 V.A.C.C.P.,
Article 17.13 V.A.C.C.P.,
Article 17.14 V.A.C.C.P.

SUPPORTING (RELATED) CASES

Minton v. Frank 545 S.W. 2d 442 (Tex. 1976)
Price v. Carpenter 758 F.Supp. 403, 406 (N.D.Tex. 1991)

Font v. Carr, 867 S.W.2d 873, 882 (Tex. App. - Houston (1st Dist.) 1993)

Barry v. Barchi 443 U.S. 55, 99 S.Ct. 2642, 61 L. Ed. 2nd 30 (1978)

LEGAL ANALYSIS

Article 2372-p3 sets forth the licensing and regulation requirements for bail bondsmen in counties with a population over 110,000 and in counties with a bail bond board). None of those circumstances apply directly to Johnson County. Articles 17.11, 17.13 and 17.14 of the Code of Criminal Procedure as set forth below address the requisites of security and sureties when in a county which does NOT have a bail bond board.

Article 17.11 V.A.C.C.P. How bail bond is taken

Section 1.

Every court, judge, magistrate or other officer taking a bail bond shall require evidence of the sufficiency of the security offered; but in every case, one surety shall be sufficient, if it be made to appear that such surety is worth at least double the amount of the sum for which he is bound, exclusive of all property exempted by law from execution, and of debts or other encumbrances; and that he is a resident of the state, and has property therein liable to execution worth the sum for which he is bound.

Article 17.13 V.A.C.C.P. Sufficiency of sureties ascertained

To test the sufficiency of the security offered to any bail bond, unless the court or officer taking same is fully satisfied as to its sufficiency, the following oath shall be made in writing, and subscribed by the sureties: "I, do swear that I am worth in my own right, at least the sum of (here insert the amount in which the surety is bound), after deducting from my property all that which is exempt by the Constitution and Laws of the State from forced sale, and after payment of all my debts of every description, whether individual or security debts, and after satisfying all encumbrances upon my property which are known to me; that I reside in County, and have property in this State liable to execution worth said amount or more.

(Dated and attested by the judge of the court, clerk, magistrate or sheriff.)"

Article 17.14 V.A.C.C.P. Affidavit not conclusive

Such affidavit shall not be conclusive as to the sufficiency of the security; and if the court or officer taking the bail bond is not fully satisfied as to the sufficiency of the security offered, further evidence shall be required before approving the same.

In a county without a bail bond board the basic criteria and limit on the Sheriff's discretion of whether to accept a bond posted by an attorney for a client which the attorney is undertaking to represent is set out by Article 17.11 Section 1 of the Code of Criminal Procedure ... in every case, one surety shall be sufficient, if it be made to appear that such surety is worth at least double the amount of the sum for which he is bound By practice, the focus in this analysis seems to be on the individual bond, and does not necessarily take into account the other bond risks (contingent obligations) of the surety.

The Sheriff has wide discretion in determining what he will require as evidence of the financial security of the surety when not subject to the Bail Bond Act, but it appears that the Sheriff's discretion does not extend to the point of allowing him to demand the actual conveyance of property (in trust or otherwise) to the County, the Sheriff or the Treasurer. See Minton v. Frank, 545 S.W. 2d. 442 (Tex. 1976). While the Minton case occurred in a county with a bail bond board, because of the exceptions set forth by Article 2372-p3 Section 3(e) to the Bail Bond Act as applied to attorneys, the limitations on what the Sheriff may require of sureties in the way of security in a county without a bail bond board is analogous.

The Sheriff may require the execution of the affidavit as set forth in Article 17.13, and may further require other evidence of the net worth of anyone making a bond (bank statements, title opinion, appraisal etc.). The Sheriff apparently MAY NOT REQUIRE that the attorney deposit funds, tender a deed of trust or otherwise actually pledge collateral to the County, the Sheriff or the Treasurer as security for a bond. The "security" is to be held by the surety, and would become insufficient if the attorney divested himself of the property or encumbered it. Font v. Carr, 867 S.W.2d 873, 882 (Tex. App. - Houston (1st Dist.) 1993). See also, Article 17.11 Section 1, Article 17.13 and Article 17.14 V.A.C.C.P.

Execution of bonds by attorneys for clients they represent in subsequent criminal proceedings appears to be a recognized property interest. "In this case, state law has created a clear expectation

that licensed attorneys may execute bail bonds provided they actually represent the individuals bonded out of county jail in subsequent criminal proceedings." Price v. Carpenter 758 F.Supp. 403, 406 (N.D.Tex. 1991) citing Barry v. Barchi 443 U.S. 55, 99 S.Ct. 2642, 61 L. Ed. 2nd 30 (1978). Because such a property interest is recognized, the County must be careful not to wrongly or mistakenly deny such property interest, and any denial or deprivation of such property interest requires due process of law. See Price v. Carpenter, *supra*.

CONCLUSION

The Sheriff may require sureties to execute affidavits demonstrating that the surety is worth at least double the amount of the sum for which he is bound, exclusive of all debts and exempt property. The Sheriff may also require other evidence of the net worth of the surety. The Sheriff can inquire as to whether the collateral is otherwise pledged or encumbered because such status affects ownership and value. The Sheriff may also require appraisals based on Article 17.14 of the Code of Criminal Procedure. Such requirement would be part of an evaluation of the sufficiency of the security which supports an affidavit of net worth.

The discretion of the Sheriff does not extend to demanding that the surety convey property in trust or otherwise to the County, the Sheriff, or the Treasurer as a condition of accepting a bail bond from such surety since Johnson County does not have a bail bond board pursuant to V.A.T.C.S. Article 2372-p3 (Bail Bond Act).