

THE OFFICE OF

TEXAS ATTORNEY GENERAL

THE CRIMINAL DISTRICT ATTORNEY
McLENNAN COUNTY, TEXAS

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March 3, 1998

RQ-1106

JOHN W. SEGREST
CRIMINAL DISTRICT ATTORNEY
Opinion Committee

Dan Morales
Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-40126-98
I.D. # 40126

Re: Request for An Opinion concerning a Bail Bond Board's authority over the use of assumed names

Dear Mr. Morales:

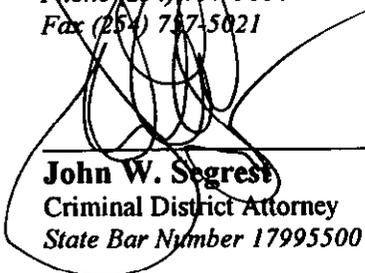
McLennan County has a bail bond board, and the county pays a private law firm to advise the board on legal matters. A situation has come up, and the private law firm has requested that I present to you the questions set forth in the attached letter. The request was prepared by the private attorney, but I will adopt it as my own for purposes of a formal request, as shown by my signature thereon.

I am also attaching Atty.Gen. LO 97-050, which seems to have spurred some bondsmen in this county to do business under the names of individuals who have had there personal licenses revoked for just cause.

If anything further is needed, don't hesitate to contact me.

Respectfully Submitted;

John W. Segrest
Criminal District Attorney
McLennan County, Texas
219 North Sixth Street, Suite 200
Waco, Texas 76701
Phone (254) 757-5084
Fax (254) 757-5021



John W. Segrest
Criminal District Attorney
State Bar Number 17995500

February 26, 1998 .

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Dan Morales
Attorney General
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

Re: Use of the name of a disqualified individual or individual who has had his bail bond license revoked as the assumed name of a licensee. Use of assumed names by corporate surety.

Dear Mr. Morales:

McLennan County, Texas is a "bail bond board county", meaning that a bail bond board has been established pursuant to Article 2372 p-3, V.T.C.A. to administer licensure and enact reasonable rules and regulations regarding bail bonding in McLennan County. In this regard, several issues have arisen for which there does not appear to be clear guidance from the Act or authorities relating thereto. These are:

1. May a bail bond licensee operate under an assumed name which is the name of an individual who would either be disqualified from seeking a license or who has had his/her bail bond license revoked?
2. Regardless of the answer to question no. 1, may a bail bond board enact a local rule or regulation that prohibits the use of an assumed name that is the name of a person who would be disqualified from holding a license himself, or who has had his license revoked?
and

3. May a corporate bail bond licensee do business under an assumed name, or multiple assumed names in a county?

Article 2372 p-3, V.T.C.S. provides at Section 15(g) that "no person may advertise as a bondsman that does not hold a valid license under this Act." It is the position of the McLennan County Bail Bond Board that allowing other licensees to use the names of disqualified individuals or revoked licensees is violative of this provision, especially where the disqualified individual or revoked licensee maintains some business arrangement with the licensee who uses the assumed name whereby the disqualified individual or revoked licensee shares in the profits of the business.

In addition, the function of bail bond boards and the intent of the Bail Bond Act would be impaired if persons who would not qualify under the Act or who have had their license revoked pursuant to the Act could essentially circumvent the process by entering into business relationships with qualified licensees who in turn use the disqualified person or revoked licensee's name. County bail bond boards have been given the authority "to exercise any powers incidental or necessary to the administration of this Act, to supervise and regulate all phases of the bonding business and enforce this Act within the county, and to prescribe and post any rules necessary to implement this Act." See Art. 2372 p-3, §5 (f.)(1.), V.T.C.S. Although the Bail Bond Board realizes that its authority to regulate the use of assumed names has been determined by your office to be limited¹, it believes that the concerns posed by the practice of using the names of disqualified persons or revoked licensees justifies local regulation of this practice.

Finally, the issue has arisen as to whether a corporate surety may operate under an assumed name or multiple assumed names within a county. Although the Act does not preclude the use of assumed names², surety and guaranty companies are apparently not allowed to operate under an assumed name.³ The surety corporations argue that their "agents" are operating under assumed names, not the corporation itself, and that since §7(c) of Article 2372 p-3, V.T.C.S. requires separate licensure of each agent, each agent may operate under a different assumed name. However, according to your office's prior opinions, it would not appear that there is such a distinction between the corporation and its agents. That is, an agent is not truly licensed in his own right, but, rather, just as an agent of the corporation.⁴ Thus, if the corporate surety cannot operate under an assumed name, it would appear logical that its agents could not do so.

In addition, assuming a corporate surety can operate under an assumed name, the issue arises as to whether each of its agents may operate under different assumed names. Your office has opined, albeit as to individual bondsmen, that a licensee may only operate under one assumed name.⁵ Individual bondsmen complain that allowing corporate sureties to operate under multiple assumed names puts them at a competitive disadvantage by allowing the corporate surety to have multiple listings. Again if the license issued to an agent is not a license in the agent's own right,

¹ See Tex. Atty. Gen. L. Op. 97-050 (1997); Tex. Atty. Gen. Op. No. MW-321 (1981).

² See Tex. Atty. Gen. Op. No. MW-321 (1981).

³ See §36.03, Tex. Bus. & Com. Code, §36.03, and comment of Bar Committee following Statute.

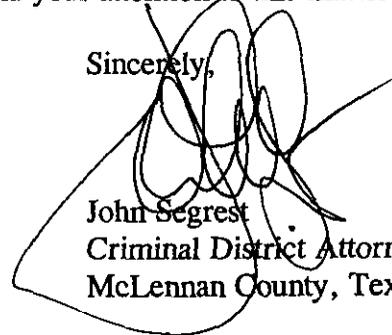
⁴ See Tex. Atty. Gen. Op. No. DM-224 (1993).

⁵ See Tex. Atty. Gen. Op. No. JM-1023 (1989).

it would appear that the "true licensee", the corporate surety, should not be allowed to operate under multiple assumed names.

Your legal opinion and guidance is respectfully sought. This is a matter of importance to the McLennan County Bail Bond Board and your attention to this matter will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Segrest", is written over the typed name and title. The signature is somewhat stylized and overlaps the text below it.

John Segrest
Criminal District Attorney
McLennan County, Texas