



## Office of the Attorney General

State of Texas

November 10, 1998

DAN MORALES  
ATTORNEY GENERAL

The Honorable Glen Wilson  
Parker County Attorney  
One Courthouse Square  
Weatherford, Texas 76086

Letter Opinion No. 98-105

Re: Whether the sheriff of a county with a population of less than 110,000 that has not established a bail bond board is authorized to adopt bail bond licensing rules modeled on article 2372p-3, V.T.C.S. (RQ-1138)

Dear Mr. Wilson:

You ask whether the sheriff of a county with a population of less than 110,000 that has not established a bail bond board under article 2372p-3, V.T.C.S., is authorized to adopt bail bond licensing rules modeled on that statute. We agree with your conclusion that this is not permissible, because the taking of bail bonds in a county that has not established a bail bond board is governed by chapter 17 of the Code of Criminal Procedure, which does not provide for licensing of bondsmen.

You explain that Parker County, which has a population of less than 110,000,<sup>1</sup> has not established a bail bond board. The sheriff "circulated among the bondsmen seeking to transact bail bond business in Parker County, Texas, a packet entitled Application for Bail Bond Licensing . . . . This packet essentially tracked the rules and regulations set forth under . . . [a]rticle 2372p-3." We gather that the sheriff has attempted to require bondsmen to obtain a license from the sheriff in order to be eligible to act as a surety on a bail bond in the county. After a bondsman challenged the sheriff's regulations, the officers of the county who would be members of a bail bond board under article 2372p-3 met to discuss the feasibility of creating a board. You state that "[s]everal of those in attendance questioned the need to create a bail bond board in order for the system of rules and regulations adopted by [the sheriff] (and modeled after the Bail Bond Act) to be continued, thus prompting [this query] . . . ."

We believe that the county may not impose a bail bond licensing scheme unless it creates a bail bond board under article 2372p-3. Prior to the enactment of article 2372p-3, the taking of bail bonds in all Texas counties was governed exclusively by chapter 17 of the Code of Criminal

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<sup>1</sup>See Bureau of the Census, U.S. Dep't of Commerce, 1990 Census of Population: General Characteristics: Texas 3 (1992) (population: 64,785).

Procedure.<sup>2</sup> Chapter 17 authorizes an officer taking<sup>3</sup> a bail bond to “require evidence of the sufficiency of the security offered.”<sup>4</sup> The sufficiency of the security offered by a surety is governed by articles 17.11 through 17.14. One surety shall be sufficient if

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 this state, and has property therein liable to execution worth the sum for which he is bound.<sup>5</sup>

The officer taking the bail bond may require an affidavit attesting to the surety’s worth.<sup>6</sup> Article 17.14 provides that the officer may require further evidence “if the . . . officer taking the bail bond is not fully satisfied as to the sufficiency of the security offered . . .”<sup>7</sup> Under article 17.11, a person who has signed as a surety on a bail bond and is in default is disqualified to sign as a surety “so long as he is in default on said bond.”<sup>8</sup>

To review, chapter 17 generally governs the taking of bail bonds on a bond-by-bond basis. A person acting as surety must be a Texas resident and offer sufficient security.<sup>9</sup> A person is disqualified to act as surety on a bond if in default on a prior bond.<sup>10</sup> With these exceptions, chapter 17 does not set forth qualifications for sureties. While articles 17.11 through 17.14 give an officer taking a bail bond broad discretion to determine whether the security offered by a surety is sufficient,<sup>11</sup> chapter 17 does not require a person to obtain a license to be eligible to act as a surety

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<sup>2</sup>In addition, corporate sureties were (and are) subject to regulation under insurance laws. *See generally International Fidelity Ins. Co. v. Sheriff of Dallas County*, 476 S.W.2d 115 (Tex. Civ. App.--Beaumont 1972, writ ref’d n.r.e.) (holding sheriff lacked authority under Code of Criminal Procedure articles 17.06, 17.11, and 17.13 to question the solvency of a corporate surety authorized to do business in this state by the former State Board of Insurance).

<sup>3</sup>For provisions governing when a peace officer may set and take bail, *see* Code of Crim. Proc. arts. 17.20 - .22; *see also Hokr v. State*, 545 S.W.2d 463 (Tex. Crim. App. 1977) (peace officer may set and take bail in misdemeanor case if magistrate not available).

<sup>4</sup>Code Crim. Proc. art. 17.11, § 1.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.* art. 17.13.

<sup>7</sup>*Id.* art. 17.14.

<sup>8</sup>*Id.* art. 17.11, § 2.

<sup>9</sup>*Id.* § 1.

<sup>10</sup>*Id.* § 2.

<sup>11</sup>*See* Attorney General Opinion DM-483 (1998) at 6 (Code of Criminal Procedure articles 17.11, 17.13 and (continued...))

nor does it authorize an officer taking bond to require a surety to be licensed. Furthermore, the authority to assess the sufficiency of the security offered is vested in “[e]very court, judge, magistrate or other officer taking a bail bond . . . .”<sup>12</sup> Chapter 17 does not vest any special authority in the sheriff.<sup>13</sup>

Article 2372p-3 was enacted in 1973.<sup>14</sup> It creates a bail bond board in all counties with a population of 110,000 or more.<sup>15</sup> In counties with a population of less than 110,000, the creation of a bail bond board is within the discretion of a majority of the officers who would be members of the board or who would designate members of the board.<sup>16</sup> Article 2372p-3 applies “only to the execution of bail bonds in counties having a population of more than 110,000 . . . or in counties of less than 110,000 where a board has been created.”<sup>17</sup> In a county that has a board, no person may act as a bondsman except persons licensed under the act or attorneys who meet certain requirements.<sup>18</sup> Article 2372p-3 vests the authority to license and discipline bondsmen in the board rather than the sheriff.<sup>19</sup> A sheriff may not refuse to accept a bail bond from a licensed bondsman.<sup>20</sup>

We have not been able to locate a case addressing the authority of a sheriff in a county not governed by article 2372p-3 to adopt bail bond licensing rules. Courts have addressed the relationship between article 2372p-3 and chapter 17 of the Code of Criminal Procedure, however, in cases involving the authority of the sheriff in a bail-bond-board county to take certain actions under chapter 17<sup>21</sup> or with respect to attorneys not subject to article 2372p-3’s licensing

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<sup>11</sup>(...continued)

17.14 authorize sheriff taking bail bond to consider other bonds executed by surety).

<sup>12</sup>Code Crim. Proc. art. 17.11, § 1.

<sup>13</sup>See note 3 *supra*.

<sup>14</sup>Act of May 18, 1973, 63d Leg., R.S., ch. 550, 1973 Tex. Gen. Laws 1520, 1520.

<sup>15</sup>V.T.C.S. art. 2372p-3, § 5.

<sup>16</sup>*Id.*

<sup>17</sup>*Id.* § 3.

<sup>18</sup>*Id.* § 3(a), (e).

<sup>19</sup>See *id.* §§ 3, 6, 8-10. The sheriff (or the sheriff’s designee) is a member of the board. *Id.* § 5(b)(1).

<sup>20</sup>*Id.* § 14(a).

<sup>21</sup>See, e.g., *Font v. Carr*, 867 S.W.2d 873 (Tex. App.--Houston [1st Dist.] 1993, writ dismiss’d w.o.j.); *Burns v. Harris County Bail Bond Bd.*, 663 S.W.2d 615 (Tex. App.--Houston [1st Dist.] 1983, no writ).

requirements.<sup>22</sup> While these cases involve different facts, we believe that they speak to your situation. These cases suggest that chapter 17 and article 2372p-3 are different statutory schemes that generally conflict.<sup>23</sup> As one court has noted,

[t]he only way to give effect to both of these conflicting statutes is to hold that in the counties where it applies, article 2372p-3 controls. . . . In counties where the Act does not apply, article 17.14 applies because there is no other regulatory scheme or regulatory body for bail bondsmen.<sup>24</sup>

We find *Minton v. Frank*<sup>25</sup> particularly instructive. In that case, the Texas Supreme Court considered attorneys' challenge to a Travis County sheriff's policy requiring attorneys to make a cash deposit or execute a deed of trust in order to execute bail bonds for clients, requirements nearly identical to article 2372p-3 licensing requirements.<sup>26</sup> The court held that article 2372p-3's licensing requirements did not apply to the attorneys, who were expressly exempted from those provisions, and that the sufficiency of the attorneys' bail bonds was subject only to chapter 17 of the Code of Criminal Procedure. In striking down the sheriff's attorney bail-bond policy modeled on article 2372p-3, the court clearly determined that the policy was inconsistent with chapter 17 and exceeded the sheriff's authority.<sup>27</sup>

In Parker County, a county with a population of less than 110,000 that has not created a bail bond board, article 2372p-3 is inapplicable and chapter 17 of the Code of Criminal Procedure controls the taking of bail bonds. While articles 17.11 through 17.14 give a sheriff taking<sup>28</sup> a bail bond broad discretion to determine whether the security offered by the surety is sufficient,<sup>29</sup> chapter 17 does not authorize the sheriff to adopt a licensing scheme for bondsmen. The sheriff is not

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<sup>22</sup>See *Minton v. Frank*, 545 S.W.2d 442 (Tex. 1976); see also Attorney General Opinion DM-483 (1998) at 7-8.

<sup>23</sup>See *Font*, 867 S.W.2d at 881-82.

<sup>24</sup>*Id.* at 882.

<sup>25</sup>545 S.W.2d 442.

<sup>26</sup>*Id.* at 445.

<sup>27</sup>*Id.* at 445-46.

<sup>28</sup>For a discussion of situations in which sheriff is authorized to take bond, see note 3 *supra*.

<sup>29</sup>See Attorney General Opinion DM-483 (1998) at 6 (Code of Criminal Procedure articles 17.11, 17.13 and 17.14 authorize sheriff taking bail bond to consider other bonds executed by surety).

authorized to adopt bail bond licensing rules modeled on article 2372p-3.<sup>30</sup> In order to impose a licensing scheme, the county must create a bail bond board pursuant to article 2372p-3.

### S U M M A R Y

The taking of bail bonds in a county with a population of less than 110,000 that has not established a bail bond board is governed by chapter 17 of the Code of Criminal Procedure. The sheriff of such a county is not authorized to adopt bail bond licensing rules modeled on article 2372p-3, V.T.C.S.

Yours very truly,

A handwritten signature in black ink, appearing to read "Mary R. Crouter", with a long horizontal flourish extending to the right.

Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

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<sup>30</sup>*Accord id.* at 6-8 (concluding that while Code of Criminal Procedure articles 17.11, 17.13, and 17.14 grant sheriff in county without a bail bond board broad discretion to determine whether the security offered by an individual surety is sufficient, they do not authorize a sheriff to require a surety to post collateral).