



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 9, 1997

The Honorable James M. Kuboviak  
Brazos County Attorney  
300 East 26th Street, Suite # 325  
Bryan, Texas 77803

Letter Opinion No. 97-050

Re: Whether a bail bond board may grant a license to an applicant who will do business under an assumed name recently abandoned by another licensee, and related questions (ID# 39375)

Dear Mr. Kuboviak:

On behalf of the Brazos County Bail Bond Board (the "board"), you ask two questions arising from the following fact scenario: "Alpha," an individual, was licensed by the board in July 1996. His application stated that he would do business under a specific assumed name, which we shall refer to as "X Bail Bonds." His license was issued to "Alpha for X Bail Bonds." In December 1996, Alpha informed the board that he intended to operate his bonding business under a new name, "Alpha Bail Bonds." Shortly thereafter, another individual, "Beta," filed an application for a bail bond license stating that he would do business under the assumed name abandoned by Alpha, "X Bail Bonds."<sup>1</sup> The board approved the application and tentatively granted Beta use of the assumed name. His license was issued to "Beta / DBA - X Bail Bonds." You state that the board has not issued an amended license to Alpha and that he has not filed an application for a new license.

In light of this fact scenario, you ask whether a licensee may substitute a business name during the period of a license without applying for a new license and whether the board may grant a license to an applicant who will do business under an assumed name "the same as that of a current licensee who is within his 24-month license term and who has abandoned the name."

We assume that the bail bond board in your county is governed by article 2372p-3, V.T.C.S. A bail bond board has only the authority expressly conferred upon it by statute together with those powers necessarily implied from its express statutory authority. Attorney General Opinion JM-471 (1986) at 4 (citing cases). Although this office has not addressed your precise questions, it has addressed the use of assumed names by bondsmen in general terms and has concluded that article 2372p-3 does not preclude their use:

An individual may use an assumed name in the writing and posting of bonds, provided, however, that the use of such a name does not violate either

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<sup>1</sup>Prior to December 1996, Beta was listed as Alpha's partner in X Bail Bonds. Beta was not licensed by the board during the period of the partnership. Upon dissolution of the partnership, Alpha granted the assumed name, "X Bail Bonds," to Beta.

the statutory or common law regarding names. Nothing in article 2372p-3 would prohibit the use of an assumed name by an individual properly licensed in a county with a bail bond board . . . . However, the use of an assumed name is proper only after . . . [an] individual complies with the filing requirements of chapter 36 of the Texas Business and Commerce Code.

Attorney General Opinion MW-321 (1981) at 3. This office has also concluded that while a bondsman may operate under an assumed name, a bail bond board may not issue more than one license to any one individual. *See* Attorney General Opinion JM-1023 (1989); Letter Opinion 96-044 (1996).

The use and abandonment of assumed names are governed by chapter 36 of the Business and Commerce Code. You inform us that Alpha has filed a statement abandoning the assumed name as provided by Business and Commerce Code section 36.14. Your query suggests that both Alpha and Beta have complied with all of the assumed name requirements set forth in chapter 36 of the Business and Commerce Code. *See, e.g.*, Bus. & Comm. Code §§ 36.10 - .11 (assumed name certificate requirements), .12 (material change in information requiring new certificate), .14 (procedures for abandoning use of assumed name); *see also Vanscot Concrete Co. v. Bailey*, 862 S.W.2d 781, 785 (Tex. App.—Fort Worth 1993), *aff'd*, 894 S.W.2d 757 (Tex. 1995) (after merger, successor corporation must file new assumed name certificate). For purposes of this opinion, we assume that Alpha and Beta have fully complied with chapter 36.

We first address your question about licensee Alpha's change in business name. Section 6 of article 2372p-3 requires a person who wishes to act as a bondsman in any court in a county to file an application with the board containing various information including "[t]he name under which the business shall be conducted." V.T.C.S. art. 2372p-3, § 6(a)(2). Section 8 provides that a license expires 24 months after the date of issuance unless a renewal application is filed before a certain date. While article 2372p-3 clearly contemplates that an individual licensee will operate under only one business name,<sup>2</sup> no provision authorizes a board to require a licensee who changes the name under which his or her business is conducted to obtain a new license or to amend the existing license within that 24-month period.

Section 9 provides for the suspension or revocation of a license for various reasons. Section 9(b) authorizes a bail bond board to suspend or revoke a license if the licensee made a false statement or misrepresentation in his or her application or in a hearing before the board. Thus, a board may be authorized to suspend or revoke a license if the applicant made a false statement or misrepresentation regarding the business name. Section 9 does not authorize a board to suspend or revoke a license, however, merely because the licensee has changed the business name listed in the application.

Given the limited nature of a bail bond board's authority and on the basis of the foregoing analysis of article 2372p-3, we conclude that the board is not authorized to require a licensee who

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<sup>2</sup>*See* V.T.C.S. art. 2372p-3, § 6(a)(2); Attorney General Opinion JM-1023 (1989) ("No provision is made for the licensee to operate under more than one name, the statute providing "the name under which the business shall be conducted.") (emphasis in the original).

changes his or her business name during the period of a license to apply for a new or amended license.<sup>3</sup> A board may take action to suspend or revoke the license of a licensee who changes his or her business name on the basis of the change only if the licensee made a false statement or misrepresentation regarding the business name in the application or in a hearing before the board. You do not suggest that the licensee at issue has made any false statements or misrepresentations to the board regarding the business name. Assuming that is the case, the board does not appear to have any basis to suspend or revoke the license on the basis of the change in business name.<sup>4</sup>

Next we consider whether a bail bond board is authorized to grant a license to an applicant who will do business under an assumed name "the same as that of a current licensee who is within his 24-month license term and who has abandoned the name." As noted above, section 6 requires an applicant to provide the board with "[t]he name under which the business shall be conducted." V.T.C.S. art. 2372p-3, § 6(a)(2). No provision in article 2372p-3 precludes the board from granting a license to a person on the basis that the business name listed in the application is the same as an assumed name recently abandoned by another licensee. Section 9, which provides that "[n]o license may be issued to any person who has not complied with the requirements of this Act for applying for an original or renewal license," does not authorize a board to refuse to issue a license merely because the business name listed in the application is the same as an assumed name recently abandoned by another licensee.<sup>5</sup>

Finally, we note that as a result of our construction of article 2372p-3, Alpha will continue to be licensed as "Alpha for X Bail Bonds" despite his change in business name and Beta's use of "X Bail Bonds" as an assumed name. This fact does not dissuade us. Article 2372p-3 authorizes a bail bond board to issue licenses only to individuals or corporations and their agents. *See id.* §§ 2(1) (defining "person" to mean an individual or corporation), 6 (procedures and requirements for licensure of a "person"), 7 (licensure of corporate agents); *see also* Attorney General Opinion DM-224 (1993) (discussing licensure of corporate agents). An individual license, as opposed to corporate or corporate agent license, is issued to a natural person in his or her personal capacity:

While a bail bondsman may operate his [or her] business under an assumed name, only the individual . . . may qualify as an applicant; and when acting as a surety the individual must sign the bond personally. It is the individual that

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<sup>3</sup>*Accord* Attorney General Opinion JM-232 (1984) at 1-2 (licensed bondsman authorized to do business under assumed name who conveys the business conducted under assumed name to third party continues to be licensed).

<sup>4</sup>Attorney General Opinion JM-471 (1986), cited in your letter, deals with the authority of a corporate surety to substitute one agent's name on a license for another. Because your question pertains to individual rather than corporate licensees, we do not believe Attorney General Opinion JM-471 is relevant.

<sup>5</sup>We do not consider here whether a bail bond board is authorized to refuse to grant a license to an applicant who lists an assumed name for which the applicant has failed to file an assumed name certificate or that has not been formally abandoned by the original user.

is eligible to apply for a license rather than the business being operated under an assumed name.

Attorney General Opinion JM-1023 (1989) at 3. For this reason, a board may not issue more than one individual license to any one natural person. *Id.*; see also Letter Opinion 96-044 (1996). Moreover, as discussed above, a bail bond board has very limited authority over an individual licensee's business name. Given the personal nature of an individual license and the board's limited authority with respect to individual licensees' business names, the board may want to reexamine the wisdom of issuing licenses to individuals purporting to authorize them to do business under specific business names.<sup>6</sup>

### S U M M A R Y

A bail bond board is not authorized to require a licensee who changes his or her business name during the period of a license to apply for a new or amended license. A board may take action to suspend or revoke the license of a licensee who changes his or her business name on the basis of the change only if the licensee made a false statement or misrepresentation regarding the business name in the application or in a hearing before the board. A board is not precluded from granting a license to a person on the basis that the business name listed in the person's application is the same as an assumed name recently abandoned by another licensee.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

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<sup>6</sup>We reiterate, however, that article 2372p-3 does not contemplate that an individual who is a licensed bail bondsman will operate under more than one business name. See *supra* note 2.