S T A T E O F T E N N E S S E E
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May 26, 2009

Opinion No. 09-100

Removal of Bail Bondsmen

QUESTIONS

1. Whether the District Attorney General has authority to seek removal of bail bondsmen from the approved list pursuant to Tenn. Code Ann. § 40-11-125.

2. Whether a city court having general sessions jurisdiction may remove bail bondsmen from the list of bondsmen authorized to make bail in the city court without circuit court approval pursuant to Tenn. Code Ann. § 40-11-125.

3. Whether a city court having general sessions jurisdiction may remove bail bondsmen on its own motion pursuant to Tenn. Code Ann. § 40-11-125.

OPINIONS

1. Yes. Tenn. Code Ann. § 40-11-127 specifically invests the District Attorney General with this authority.

2. Yes. Tenn. Code Ann. § 40-11-125(a) gives *any* court the authority to withhold, withdraw, or suspend the approval of a professional bondsman for misconduct specified in the statute.

3. Yes. The general sessions courts have inherent authority to initiate removal proceedings against a bail bondsman, which authority Tenn. Code Ann. § 40-11-125 does not purport to displace.

ANALYSIS

1. Tenn. Code Ann. § 40-11-127 provides: "Upon motion, any district attorney general may prefer charges to have a bail bondsman stricken from the approved list pursuant to § 40-11-125 with the same provisions for notice, answer and hearing before the court, and the same right of appeal." This provision specifically clothes the District Attorney with authority to seek the removal of a bail bondsman from the approved list.

2. In Op. Tenn. Att'y Gen. 04-145 (Sept. 2, 2004), this Office opined that a general sessions court has the authority to suspend a professional bondsman from making bonds for cases originating from that court. As there has been no intervening change in the law, we adhere to that position. A copy of our earlier opinion is attached for reference.

3. General sessions courts have inherent authority to regulate the conduct of bail bondsmen who operate in their courts. In *Taylor v. Waddey*, one of the general sessions judges of Davidson County issued an order to show cause why a bonding company's approval should not be revoked. *Taylor*, 206 Tenn. (10 McCanless) 497, 499, 334 S.W.2d 733, 734 (Tenn. 1960). Following a hearing on the matter, the five judges of the general sessions courts sitting *en banc* permanently suspended the company. *Id.* The company challenged this action on the ground that the courts had no authority to regulate the action of bondsmen absent a violation of the statutory provisions treating the writing of criminal bonds. *Id.* at 500, 334 S.W.2d at 734-35. The Tennessee Supreme Court turned aside this challenge, reasoning:

> In ruling and running these Sessions Courts it is necessary for these individuals to exercise certain decorum and have certain requirements about those who work in and out of their court, very similar to that of a court of record, in order to keep this court on a high plane. This being true, the court in the absence of any statute on the subject, whether it be General Session Court or courts of record, has certain inherent powers and right to see that the courts over which they preside are conducted in an honest and upright manner by those who are officers of the court or who are dealing with the court.

Id. at 503, 334 S.W.2d at 736. The Court went on to liken bondsmen to members of the bar, noting that the courts of the State have inherent power to look into the question of the ethical conduct of lawyers. *Id.* at 504, 334 S.W.2d at 737. "In other words," the Court stated, "that this is the power of the court beyond and regardless of any statute on the question. This same reasoning applies in the instant case, and to various courts, even down to courts that aren't courts of record." *Id.* at 505, 334 S.W.2d at 737.

The since-enacted Tenn. Code Ann. § 40-11-125 occupies the field somewhat, specifying the grounds for which a bondsman may be suspended. The statute does not, however, attempt to displace the courts' authority to act *sua sponte* in commencing removal proceedings. Tenn. Code Ann. § 40-11-125(a) provides that the approval of a bondsman "may be withheld, withdrawn or suspended by any court if, after investigation, it appears" that the bondsman has engaged in specified instances of misconduct. Subsection (b) goes on to provide that "the court" must provide notice of the charges and of a hearing, at which "the parties" have the right to produce witnesses and to appear with or without counsel.

Because Tenn. Code Ann. § 40-11-125(a) conditions the initial removal of a bondsman upon an "investigation", following which "it appears" that the bondsman has engaged in misconduct, without identifying any actor other than the court itself, we conclude that the investigation may be the court's own. In this regard, the court's inherent authority includes the ability to appoint a "special commissioner" or similar official to investigate and inquire into the conduct of bondsmen upon receipt of a complaint from an interested party. *See Ex parte Chattanooga Bar Ass'n*, 206 Tenn. (10 McCanless) 7, 14, 330 S.W.2d 337, 340 (Tenn. 1959) (so holding in the context of an attorney discipline case) (cited with approval in *Taylor*, 206 Tenn. at 505, 334 S.W.2d at 737). This prospect, in our view, accounts for the reference to "the parties" in Tenn. Code Ann. § 40-11-125(b). Tenn. Code Ann. § 40-11-127, which empowers a district

attorney general to initiate proceedings to have a bail bondsman stricken from the approved list, is not to the contrary. That provision specifies that charges preferred by a district attorney general are subject to "the same" procedural protections spelled out in Tenn. Code Ann. § 40-11-125. Tenn. Code Ann. § 40-11-127 thus contemplates that removal proceedings might be begun by an entity other than the district attorney general. It is the opinion of this Office that the courts—including general sessions courts—have authority to commence such proceedings upon their own motion.

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