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Opinion No. 13-03

Sheriff's Fee for Issuance and Acceptance of Bail Bond

QUESTION

If a defendant is charged with multiple offenses in a single case, bail is set for each offense and the defendant posts one or more bail bonds for all charged offenses, may a sheriff collect a separate $5 fee for each charged offense pursuant to Tenn. Code Ann. § 8-21-901(a)(3)(C)?

OPINION

A sheriff may only collect a single $5 fee for each bail bond issued, regardless of the number of charged offenses covered by the bond, pursuant to Tenn. Code Ann. § 8-21-901(a)(3)(C).

ANALYSIS

The question posed concerns the amount of the administrative fee a sheriff may collect for the issuance of a bail bond that includes bail for multiple charges. Magistrates, including general sessions judges, are empowered to establish bail in bailable offenses brought before the magistrate. *See* Tenn. Code Ann. §§ 40-4-101(6) & 40-4-117 (general sessions judges); Tenn. Code Ann. § 40-5-105 (magistrates); Tenn. Code Ann. §§ 40-11-101 to -405 (setting forth Tennessee's bail bond process). The Tennessee Court of Criminal Appeals has explained the working of Tennessee's bail bond process in criminal cases as follows:

> Preliminarily, we note that our consideration of the parties' arguments occurs against the backdrop of a criminal defendant's right to bail, the role of the professional bondsman in our system of criminal justice, and the nature of the "bail bond" itself. Article I, Section 15 of the Tennessee Constitution provides "[t]hat all prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident, or the presumption great." Our supreme court has held that "[u]nder the foregoing constitutional provision [a criminal defendant] is entitled to bail as a matter of right" in all except capital cases. *Wallace v. State*, 193 Tenn. 182, 245 S.W.2d 192, 193 (1952); s*ee also State ex*

> *rel. Hemby v. O'Steen*, 559 S.W.2d 340, 341 (Tenn.Crim.App.1977) (observing that "[t]here is no doubt that the right to bail is mandatory in all except capital cases"). The legislature has codified the right to bail at Tenn.Code Ann. § 40–11–102 (1997). The right to bail, however, does not ensure a criminal defendant's ability to pay the amount of bail set by the court. Rather, a private, profit-driven bail bonding industry enables the average citizen to secure enough money to obtain release, in addition to relieving significant pressures upon local jails to house criminal defendants awaiting trial. Holly J. Joiner, Note, *Private Police: Defending the Power of Professional Bail Bondsmen*, 32 Ind. L.Rev. 1413, 1420–1421 (1999).

In re Sanford & Sons Bail Bonds, Inc., 96 S.W.3d 199, 201-02 (Tenn. Crim. App. 2002).

As recognized by the Court in the case of *In re Sanford & Sons Bail Bonds*, 96 S.W.3d at 202, a bail bond is a contract between the government and the defendant and any surety. Under the terms of that agreement, the State agrees to release a defendant who is being held in a criminal case in exchange for the defendant's promise to make all required appearances before the court in connection with that case. The surety acts as a guarantor of the defendant's performance and agrees to pay the State a fixed sum of money if the defendant breaches the contract by failing to make such appearances. *Id.*

Criminal cases often involve multiple charges. If such charges arise from the same criminal episode, they are required to be joined in a single indictment, presentment, or information and treated as a single case. Tenn. R. Crim. P. 8(a)(1).

Tenn. Code Ann. § 8-21-901 establishes the fees a sheriff may charge and collect for the performance of specified services. The administrative fee that a sheriff may charge for the issuance of a bail bond is set forth at Tenn. Code Ann. § 8-21-901(a)(3)(C), which provides that the sheriff is entitled to receive a $5 fee "for every bail bond." The language of Tenn. Code Ann. § 8-21-901(a)(3)(C) is clear and unambiguous; the sheriff is entitled to collect a $5 fee for each bail bond that is issued. The statute does not provide that a $5 fee may be collected for each charge for which bail is set; instead the fee is assessed for each bail bond actually accepted and issued by the sheriff. Thus, if one omnibus bail bond was submitted to the sheriff that covered a multitude of charges, then only one $5 fee would be due. However if separate and distinct bail bonds covering the bail for each charge were submitted to the sheriff, then a $5 fee would be due for each bail bond issued. *See Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 714 (Tenn. 2012) (stating the general rule of statutory construction that, if the statutory language is unambiguous, then the court will apply the statute's plain language without any forced construction that would extend the statute's meaning). *See also* Tenn. Att'y Gen. Op. 12-38 (March 19, 2012) (opining that a sheriff may collect the $5 fee upon issuance and acceptance of the bail bond).

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