2012-085

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.STATE.AL.US

September 5, 2012

Honorable R. Eric Patterson
Mayor, City of Leeds
1040 Park Drive
Leeds, Alabama 35094

Bail Bonds – Municipalities – Counties - Jefferson County – Circuit Courts –Circuit Judges – Jefferson County

Professional surety companies and bail companies writing appearance bonds for cases in Leeds Municipal Court and on appeal to the Circuit Court of Jefferson County must secure approval from the presiding circuit judge of Jefferson County. Companies writing bonds for cases on appeal to circuit courts of another county must secure approval from the presiding circuit judge of that county.

Dear Mayor Patterson:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Leeds.

QUESTION 1

Does Alabama law require that a professional surety company and/or a professional bail company be approved and authorized by all three counties in which Leeds is located in order to issue bonds in the City of Leeds?

FACTS AND ANALYSIS

The City of Leeds is a municipality whose boundaries include areas encompassed within three separate counties: Jefferson, Shelby, and St. Clair. The municipal court is located within the Jefferson County portion of the city limits. Appeals from Leeds Municipal Court are taken in the circuit court of the county in which the crime geographically occurred. A question has arisen as to

whether various professional surety and professional bail companies must obtain annual authorizations from the presiding judge in each county in which Leeds is located.

It is the opinion of this Office that Alabama law does not require professional surety and professional bail companies to obtain the approval of each presiding circuit court judge for the counties in which Leeds is located. Rather, Alabama law requires the respective professional surety and professional bail companies to obtain the authorization of the presiding circuit judge of each county in which they desire to execute bail or appearance bonds.

Section 15-13-159 of the Code sets forth the qualifications to act as a professional surety company. In pertinent part, the Code provides the following:

> No professional surety company shall execute or become surety on any appearance bond in this state, unless it has an order granting authorization to become professional surety on any bail. The order granting the authorization shall be reissued annually, prior to January 1 of each year, by the presiding circuit judge of the ***county in which the company desires to execute bail or appearance bonds***.

ALA. CODE § 15-13-159 (2011) (emphasis added).

The qualifications to act as a professional bail company are set forth in Section 15-13-160 of the Code, which likewise provides the following:

> No professional bail company shall execute or become surety on any appearance bond in this state, unless it has an order granting authorization to become professional surety on any bail. The order granting authorization shall be reissued annually prior to January 1 of each year by the presiding circuit judge of the ***county in which the company desires to execute bail or appearance bonds.***

ALA. CODE § 15-13-160 (2011) (emphasis added).

Additionally, the substance of these two statutes is incorporated in the Alabama Rules of Criminal Procedure. Rule 7.1 states as follows:

> No professional surety company or professional bail company shall execute or become surety on any appearance bond in this State, unless it has an order

> granting authorization to become professional surety on any such bail issued annually by the presiding circuit judge of the ***county in which such company desires to execute such bail or appearance bonds.***

ALA. RULES CRIM. P. 7.1(i) (emphasis added).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep't of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994); *IMED Corp. v. Sys. Eng'g Assoc. Corp.*, 602 So. 2d 344, 346 (Ala. 1992); *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 589 So. 2d 687, 689 (Ala. 1991); *Coastal States Gas Transmission Co. v. Ala. Pub. Serv. Comm'n*, 524 So. 2d 357, 360 (Ala. 1988); opinion to Honorable Ned W. McHenry, Department of Public Safety, dated October 7, 1992, A.G. No. 93-00018 at 4.

Black's Law Dictionary defines "execute" as "to make a legal document valid by signing; to bring a legal document into its final, legally enforceable form." BLACK'S LAW DICTIONARY 649 (9th Ed. 2009). Under the facts presented, the bonds and surety agreements are brought into a legally enforceable form upon final approval by the court and are therefore executed in the county in which the court is located. Additionally, to the extent that there is any ambiguity in the above-referenced statutes, this Office is obliged to give credence to the legislative intent behind their enactment.

In construction of statutes, legislative intent may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be obtained. *Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc.*, 611 So. 2d 238, 248 (Ala. 1992); *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 589 So. 2d 687, 689 (Ala. 1991); *Advertiser Co. v. Hobbie*, 474 So. 2d 93, 95 (Ala. 1985); *Shelton v. Wright*, 439 So. 2d 55, 57 (Ala. 1983).

The purpose of bail is to secure the attendance of the defendant in court. The essence of all undertaking of bail is the appearance of [the] defendant at court for trial until he is discharged by law. *Livingston Bail Bonds, Inc. v. State*, 450 So. 2d 129, 130 (Ala. Civ. App. 1984). The principle of the law is that, when bail is given and accepted, the custody of the prisoner is transferred from the officer of the law to that of his or her sureties. *Id.* A court has the inherent authority to impose any conditions on a defendant's bail that he or she believes is reasonably necessary to preserve the safety of the public and to assure that the defendant will return to court at the appointed time. *Ex parte*

Phelps, 612 So. 2d 1177, 1179 (Ala. 1992), *citing Shabazz v. State*, 440 So. 2d 1200, 1202 (Ala. Crim. App. 1983).

Accordingly, the posting of bail or surety for the appearance of a criminal defendant in court is the assurance to the court that the defendant will appear at the time and place so designated until discharged. The enactment of sections 15-13-159 and 15-13-160 by the Legislature and adoption of Rule 7.1 by the Supreme Court are authorizations to the courts to regulate and supervise those who guarantee the appearance of criminal defendants and those who are thereby accepting "custody of the prisoner." The integrity of the judicial process requires the assurance that criminal defendants appear for court. It is only logical that the highest judicial officer within each county (the presiding circuit court judge) be empowered to oversee and regulate those upon whose assurances that he or she, and other judicial officers, must rely.

CONCLUSION

Professional surety companies and bail companies writing appearance bonds for the Leeds Municipal Court and on appeal to the Circuit Court of Jefferson County must secure approval from the presiding circuit judge of Jefferson County. Companies writing bonds for a case on appeal to circuit courts of another county must secure approval from the presiding judge of that county. The companies need only secure the approval from the presiding circuit judges of the counties in which they desire to execute bail or appearance bonds.

QUESTION 2

> Can the city's municipal court remove a professional surety company and/or bail company from its internal list of approved and authorized companies if such company does not comply with the requirements that it be authorized by the circuit judge of all three counties in which Leeds is located?

FACTS, ANALYSIS, AND CONCLUSION

As set forth in Question 1, professional surety and professional bail companies need only seek and obtain the approval of the presiding circuit court judge in the counties in which it desires to execute bail and appearance bonds. Because there is no requirement that a professional surety company or professional bail company secure the authorization of the presiding circuit court judge of each county in which Leeds is located unless they desire to execute bail and appearance bonds in each county, your second question is moot.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

LS/BB
1398863/161482