



State of Utah

GARY R. HERBERT

Governor

SPENCER J. COX

Lieutenant Governor

TODD E. KISER

Commissioner

Date: November 2, 2016

Time: Noon

Place: East Building, Copper Room

Board Members

xBrad Jenkins (Chair)

Ryan Cooper

xGordon Wright (Co-Chair)

xPeter Stevens

xLt. Kati Booth

xClay Carlos

xStephen Aina

xBrett Barratt (Non-Voting)

Staff

xTodd Kiser, *Ins. Commissioner*

xPerri Babalis, *AG Counsel*

xSteve Gooch, *PIO Recorder*

xSuzette Green-Wright, *MC Director*

xKathy Stajduhar, *Rate/Form Analyst*

xCathy Burton, *Examiner*

xJaimee George, *Examiner*

Public

Ronald M. Conder

Vivian White

Jim Clark

L. Dominic Sanone

Gary Walton

Dyon Flannery

Wayne M. Carlos

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- One E-Case that is showing as open is a stip & order that has been signed. Gary Josephson was informed about it last night, but he has not received his copy of it. Once that information is available, we will put it on the website. We expect it at the beginning of next week at the latest.
- Gary Walton asks if the stip & order is the one that's 14 months old, or if it's another one. Cathy says it's the 14 month old one.
- Stephen thanks Cathy for her work on the failure to pay judgments. The number of closed cases on this is impressive.
- Proposed Penalties for Board's Review: None
- Agency Audit Update / Cathy
 - Cathy is doing three audits right now. When she went to the Jail Commanders Association meeting, she started a number of audits when she was down there. She also stopped at the jails to make sure the staff knew her and how to contact her.
 - Sevier County jail says they took her suggestions about signage the last time she visited, and the changes have been working wonderfully.
 - When Cathy stopped at the district courts, she tried to meet with the prosecutors so they would have someone to talk to if they have questions. Brad asks how many had questions when she visited. She says not many of them did because she was talking mostly to support staff. She did note that the Kane County jail had a list that hadn't changed since June 2015, so she talked to the jail commander about updating it so the names rotate every month.
 - Wayne Carlos says he has received some inquiries about people asking the jails to remove companies from their list, and the jails have done it. We need to check the lists to make sure that isn't happening. He says it's most recently happened in Kanab.
- New Business
 - New App: Lucky Bail Bonds
 - Brad says there is no question in his mind about whether Dyon is qualified. Nobody on the board has any questions.
 - Cathy says Lucky Bail Bonds is backed by Sun Surety. She has done everything the Department needs according to statute. She has submitted articles of incorporation and an EIN that is recognized by the Department of Commerce. She has 2,000 hours and has been licensed since August 27, 2003. She submitted a letter from her current employer on letterhead verifying the 2,000 hours. She has submitted tax information for 2013, 2014, and 2015, and has set up trust accounts.
 - Brad asks if the Department has looked into the wording in statute regarding trust accounts because it is difficult to get them. Cathy says we have not been notified of any changes directly from the banking industry. Brad asks Dyon how long it took to get her trust accounts set up. Dyon says she finally went to a credit union, which was a little easier, but it still took weeks back and forth to get it done. They explained that a trust account isn't insured through the bank itself. Brad wonders if we could make a recommendation to a certain credit union that can set up these accounts. Brett says we can't make a recommendation, but we could tell people where the last applicant was successful.
 - Pete notes that a trust account is deemed to contain other people's money that you haven't earned. Clay asks if an agency could set up two accounts — one as a trust and the other as operating. Pete says the financial institution has to classify the account as

a trust account. This is because trust accounts can't be seized if there's a judgment or garnishment. Pete wonders why we're just having this problem now.

- Motion by Gordon to approve the application. Seconded by Kati. Motion passes 6-0.
- Interaction of jail commanders / Jail Commander Mike Winget
 - Mike has been in law enforcement for 35 years and has been a jail commander since 2007.
 - Millard County has 3 of the major bonding companies who are regulars in the county, plus one that is occasional. There have been no problems. They're a smaller jail so they're flexible. They can open the doors a bit more for the bonding agent to visit with the inmate at different times.
 - The Jail Commanders Association is a subcommittee of the Sheriffs Association. They meet quarterly. The JCA works closely with Cathy and pull their lists from the Department's website.
 - Millard County Jail posts the lists in all applicable areas and reviews them regularly. They haven't had any problems with anyone, and they work closely with the bonding agents in the area. The jail's policy is that no employee can recommend or steer an inmate to any individual bond company. Inmates generally go down the list and call anyone they can. Whoever shows up first is the one who bonds them out. They accept revoke bonds and bail skips with no problems as long as the paperwork is in order.
 - Brad asks if any issues or problems relating to the bail industry come up during JCA meetings. Mike says no. He asked for feedback from other jail commanders about issues they want brought to the board, and there were none. The system seems to be working well.
 - Wayne asks if Mike is the JCA chair. Mike says no, he's the past president. The current president is Rhonda Bullock of Grand County.
 - Clay asks about the scam that has been going on where a company bails an inmate out, then someone contacts the cosigners and family members of the person who has bonded out and tells them they need to wire them more money or they'll throw the person in jail. He says it has happened to his customers recently in Weber County.
 - Clay says customer information is written down during the client meeting, but isn't recorded electronically. The information isn't coming from the agency in his case, so he suspects the only place it could come from is the jail. Mike says he doesn't know how that would happen in his case. Kati says the name of the company that bailed someone out is public information, but the contact information of the person isn't public.
 - Dyon Flannery says it was happening to her customers a year or so ago, and her customers had sent money. She found out that someone had called the Davis County jail and that they were a court clerk, and their system had gone down and they needed a list of contacts for everyone who had bailed out in the past few days.
 - Clay suggests that this scam should be a topic of conversation at the next JCA meeting. Kati says she sent it out to the mailing list after the last Bail Bond Board meeting. Mike says he can take it back to the JCA.
- Old Business
- Other Business
 - Discuss "cash bond" bulletin / Cathy

- Cathy states that cash bail is a sum of money, not a surety bond, that is posted to secure a prisoner's release. Section 31A-35-102(1) is the definition for "bail bond" which among other things says a bail bond is an insurance product. Section 31A-35-402(1) says, "A bail bond agency may only sell bail bonds."
- Utah Criminal Code 77-20-1; 77-20-4; and 77-20-7 all apply to bail.
- The Utah Supreme Court issued a decision in *Royal Consulate of the Kingdom of Saudi Arabia v. Honorable Derek Pullan* regarding cash bail. In cases of cash-only bail where a sum of money is paid into a court by a criminal defendant or on the defendant's behalf to secure the defendant's jail release, it is only the court-deposited cash that secures the defendant's release, not a surety posted jail bond with its associated surety legal obligations.
- Laws related to loaning money for cash bail lie within the jurisdiction of the Department of Financial Institutions.
- Businesses that want to market cash bail cannot use their bail agency name to do so.
- Brad asks whether the department's position on cash bail is that the department can or cannot regulate it. Cathy says the department has given agencies a license to sell surety bail bonds.
- Pete asks if all bail bonds are surety bail bonds. Brad says there's cash-only bail, bail bonds, and if someone comes to him with a \$5,000 cash-or-bond, he can go to the jail and post that.
- Stephen says if a bail bond surety were to post cash bail, it would not be acting as a surety because there is no written agreement that would come under the jurisdiction of the court, and there would be no guarantee of the appearance of the defendant. If a surety wants to take someone's money and post it as bail, he would imagine that's fine, but it's not under the action of the surety, so they would lose all other rights to notice and other protections.
- Brad says then that the difference isn't how it's posted as cash-only or cash-or bond, the determining factor is how that is posted to the courts or jail. He could then take a bond over for a client's release, and is entitled to all protections and notifications. However, if he took in cash for their release, he would not get the protections and notifications. Stephen says the bail would be forfeited the second they didn't appear.
- Perri says it's important that we define what "bail", "cash bail", "cash-only bail" and "bail bond" mean. Because "cash bail" and "cash-only bail" are different.
- The *Royal Consulate* case talks primarily about cash-only bail, then gets into cash bail. One of the holdings is that when cash bail is posted, that money is deemed to be the defendant's money, no matter where the money comes from.
- Gordon says in the same ruling on page 3, it says: "*The person posting the cash bail may be merely functioning as a courier for the defendant's own funds, may be providing the funds out of friendship or familial loyalty, or may have extracted some agreement that may or may not be legally enforceable as a private contract.*" He says if he gets a call from a client whose son has a \$10,000 bond and then when they do the bond, the jail runs a warrant check and finds a separate charge for \$200 cash-only. If the family asks him to take the \$200 cash-only to post it, can he do that? He says the bulletin seems to say that he couldn't do it. Perri says he could do it, but he can't charge for it. Bail agencies are only entitled to charge for bail bonds and sell bail bonds; they can't sell cash bail.

- Pete says the statute language says agents are limited by the line of authority they have. So a licensed bail bond agent can't sell any other kind of insurance. He doesn't read this as restricting them from providing cash bail. If someone gave him cash to deliver to the court, there isn't anything that stops him from being Gordon the person vs. Gordon the bail bond agent. As long as he's not charging for it.
- Stephen says the bond surety would want to be aware of that activity because you'd start opening yourself up to personal liability and other things. He doesn't think a person could be stopped from delivering cash-only bail for somebody else, but it wouldn't be under the surety license.
- Gary Walton says he was excited to see the proposed bulletin, but he wants to clarify something: He has a surety bail license, so he's able to sell bail bonds. But if his granddaughter has trouble selling Girl Scout cookies, if he takes them to his office, he doesn't have a license to sell Girl Scout cookies — would that put him in violation? He says Cathy's points in the bulletin are the same as his counter points. Under bail there are 4 avenues for release: bail bond, own-recognition, cash bail, and property bonds. The Department only regulates the insurance product. If they want to expand their authority, he would like the Department to start licensing the cash bail machines in the jail, pawn shops, and check cashing places. As a bail bond agent selling a non-controlled insurance product (Girl Scout cookies), he believes this bulletin as written impedes his personal rights. Pete disagrees and says the bulletin doesn't impede in any way: It says as a bail bond agent, you can only sell bail. Gary says if he issues cash bail or own-recognition or check cashing, none of those fall under the Department's auspices. Perri says that's right, but it fall under the auspices of other departments. If you're going to do activities like payday lending, you have to get licenses in other areas. A bail license doesn't give carte blanche.
- Gary says the Supreme Court ruling was clear that cash bail and a bail bond are two different things. Brett asks if there's such thing as a cash bond. Kati clarifies that when setting bail, judges can say if a charge is bondable or is cash-only. They're both types of bail: one is a bail bond and the other is cash bail. There is no such thing as a cash bond.
- Brad asks if there's a difference in the Department's eyes between a cash-only bail, or a bondable bail where an instance where someone gives them cash to post for the defendant's release. Perri says that's something the courts deal with. The judge sets what type of bail is allowed. Brad says if his son or daughter is arrested, they don't have to go through a bondsman, they can pay the bail themselves. If it's cash or bond, if Gordon tells him it will be \$5,000 to get his son out. But Brad is out of town, so he sends Gordon \$5,000 cash and asks him to post it to the jail. Is that cash-only? Kati says yes, as long as he's delivering the cash as Gordon Wright, not as Gordon Bail Bonds. Perri says you couldn't charge a fee for it either.
- Gordon asks for clarification in writing. He asks if the Department will regulate pawn shops; Perri says no, there are other entities that do that. He asks if the department will regulate a pawn shop posting cash bail; Perri says she doesn't know.
- Gordon says in 2011 there was discussion about cash machines. *Jaimee George said during that discussion that the machines were only there to alleviate needing a person there at 1am to take cash bail. Gordon asked at the time if the Department has any regulations on cash bail. If he gets a call on cash bail, it's the wild-wild west and*

he can do whatever he wants. Perri would not comment on Gordon's wild-wild west comment. Gordon says during the discussion about the cash machine, he clearly changed the subject to cash bail. Perri says it wasn't that clear to her. Gordon reads Perri's comment at the time: "*Jaimee already said it. Because it is not a bond, it is not within our jurisdiction to regulate.*" Perri says that's true — we regulate the insurance products. Gordon asks why this bulletin is even here, then. Perri and Pete say it's to tell agents that they can't issue cash bail as a bail bond licensee.

- Wayne says bail bondsmen have offered cash to let someone out of court for 200 years. He doesn't think everyone has done it and it's not a business that anyone is doing full-time, but it is done in conjunction with writing bail bonds. He asks what stimulated the department to address the issue. Will the department require agencies to get a lending license to do it? Cathy says there have been some investigations where there has been cash-only proffered to the court. In one instance, the cash-only bail was given similar to how Gordon suggested earlier: There were two bondable amounts, then there was a cash-only. The family gave all the money to the bail bond producer, including 10% of the bondable amounts and the cash-only. The money was posted to the court, but put in the bail agency's name rather than the defendant's. Kati says third district courts require jails to collect the name, address and phone number of anyone posting cash bail. An audit of the court said because of the return of bail, it needs to be returned to the person who posted it. Kati says if, for instance, Gordon brought the money, she would have to put his name on it unless he told her otherwise. Brad asks if, on that particular investigation, the bail agent charged for posting the cash bail. Cathy says they took a commission on the overall amount. Brad then clarifies that the bail was then given back to the bail agent, and the agent never gave it back to the defendant or the cosigner. Cathy says that's correct. Pete asks for clarification: Cathy said at one point the prisoner's family gave the bail bondsman the money, which would make him a courier; but then he charged the family as though he was providing the money, which is the violation. Cathy says that's correct.
- Brad says people who have warrants or who are here illegally often don't post bail themselves because they have to give their name and information.
- Gary says he is still wondering where the Department gets the authority to regulate cash-only bail transactions, which is an aspect of his personal business that is outside the scope of the Department and outside the scope of his license to write an insurance product bail bond. Gordon agrees and says it was determined in 2011 that the Department could not regulate them, referring to the minutes.
- Gordon asks what code changed from 2011 to 2016. Cathy says under the bail agency license, you must only do bail under the bail agency name. Commissioner Kiser says if someone wants to do loans or payday lending, they must be licensed with the Department of Financial Institutions, and pawn shops must be licensed with the Department of Commerce. If you want to post cash bail and charge a fee for it, the DFI regulates that.
- Brad says what Gordon is trying to say is that if the Department doesn't regulate it, how can they penalize anyone for it or control it. Commissioner Kiser says if a bail agency operates outside the bail agency license, for instance taking money to use as bail and charging a fee for it, then the Department does have the authority to regulate.

- Pete says the easiest way to answer Gordon's question is that a set of facts presented itself for which the law was interpreted. The law and statute hasn't changed. However, Commissioner Kiser brought up an interesting problem: If Gordon the payday lender loans money, the Department doesn't have any authority because they're a bail agent and a payday lender. Cathy says the reason this came up is because a bail agency filed forms that referred cash-only bail. A bail agency was doing the business of cash-only bail under their bail agency license. All the information listed with the department included a side business on their forms. Pete notes that this is where the issue arises: That form submitted to the department, wouldn't be approved because you can't do cash bail. It's a clarification, not a change, because someone is trying to get into the cash bail business.
- Gary says what he's hearing is that any business done in his office, regardless of what it is, is done under Beehive Bail Bonds' license. In his hypothetical case of selling Girl Scout cookies in his office, this would make him out of compliance. He says he wants to be the first test case. He is writing bail to this day, and he wants to test the constitutionality of this action. Brett asks specifically what he doesn't agree with. Gary says the fact that the Department can control his conduct outside the scope of his license. Brett says he doesn't think it says that; it's saying as a licensee, the law says you can only sell bail bonds, which is an insurance product. If you're loaning money or selling another product, you need to get the relevant license. Gary says he would like to file a writ to stop this enforcement. Pete says this isn't an enforcement, it's an interpretation of the statute. Gary says he wants the court to look at it and offer their interpretation of the constitutionality and scope that the Department has. Gordon says the Supreme Court already said a person posting cash bail may or may not have a legally enforceable private contract — how can the Department enforce on a private contract?
- Gordon says he doesn't ever post cash bail, except two years ago in the case he talked about earlier. But it bothers him when a government regulatory body tells people they have to comply with a certain law. He also disagrees with the 2011 interpretation.
- Clay understands the issue. He wants to know if we can have a visit from the Department of Financial Institutions to talk about the issue at the next board meeting. Perri says they are also her client, and she cannot confirm whether they will be here. She doesn't know if DFI has been informed of the issue. Clay asks if the Department has any intention of informing them of it.
- Pete would like "unless properly authorized and licensed to do so" in the bulletin. The agency itself cannot be licensed as a lender, which is the issue. The agency is restricted to insurance.
- Dominic Sanone says this sort of thing happens all the time, when grandma from out of state sends money to bail out her grandson who has a bond and a cash-only bail. She will send the 10% for the bondable bail and \$525 for the cash-only bail. If he, as the bail agent, takes the money to the jail for her but doesn't charge for the cash, is that a problem? The consensus is that no, it's not a problem. Dyon gives a similar situation. Brad asks if Dominic can document this on any of his paperwork to show that grandma paid cash bail, but no money was charged on it. Perri says it would need to be a case-by-case basis. Perri says that they should document that they received the money and couriered it to the court, and did not charge a fee. He also asks,

rhetorically, if you could charge the credit card fee without that being considered a commission.

- Gary asks if the department is going to stand by this bulletin and issue it, or will it be revisited and clarified at a later date. Brett says the law is the law and it hasn't changed. The Department has an obligation to enforce the law. Gary says there's disagreement about what the law is and how it applies to the Department and a bail bond agent.
- Commissioner Kiser says that, legislatively, this may be something to look at. It appears to be something that can happen or is happening in the industry. Should we make it law that the Department regulates the cash and that a fee is acceptable up to a certain amount. This could be legislation we can look at if they are interested in pursuing it. The Department can consider overseeing it all since it's all intertwined. The Department wants to do what it can to make it work positively for everyone. If there is interest in bail agencies doing cash bail and making money on it, let's consider it. If we can make rules that allow the industry to do it, that's something we should pursue. Gordon thanks Commissioner Kiser and says he thinks this should be legislated.
- Brad asks if this can be put in the Department's bill. Commissioner Kiser says the Department's bill is very passive and is generally for cleanup items, and they're easy to get passed. If you add something controversial, the department's bill doesn't get passed or it gets delayed. Sometimes they have to include controversial items, like national standards updates and things like that. Generally, the Department's bill needs to be noncontroversial. He would like to explore how controversial any potential changes would be.
- Brett would like the Bail Bond Association to provide the clarification the law needs, and he would like to find out if any fix made would bleed over into the Department of Financial Institutions.
- Brad suggests using the same percentages and same commissions whether it's bond or cash. Perri asks if they really are going to charge 20% to take someone's cash to the court. Gordon says it doesn't work like that, but if you're fronting \$50,000 cash... Perri says that's the problem — if you're fronting it, then you're lending money. Brett says you'd need an exemption from DFI regulations to enter into that transaction.
- Suzette says when you're doing notary work, you're allowed a courier fee. Maybe that could be the amount charged. Kati says that's a great idea.
- Gary says this is a routine thing where mom and dad obligate themselves to Beehive Bail Bonds, who then fronts the \$2,500 cash. Beehive has to show their ID at the jail and give the address and phone number, then the money goes into the court system, the drug addict daughter fails to appear, Beehive has no right to arrest... The whole circumstance on a cash bail is different than on a surety bond. But if she does show up to court, the money is sent by the court to the drug addict — not to Beehive or to mom and dad. Kati says it could go to her fines or court fees, so the cash you're posting goes from an assured appearance to go pay off fines, fees and restitution as ordered by the judge.
- Gary says cash bail is a whole different realm, and whoever is posting it should understand that they're on thin ice.

- Commissioner Kiser asks what an appropriate courier fee would be. Brad says the courier fee would need to cover just the credit card fee of around 3% to 5%. He wouldn't charge anything else. Commissioner Kiser says if it's his child and he posts the cash, who explains that fines come out of that cash and that he may not get his money back? Who explains that if his child skips town, who helps the person understand that in a cash situation, they may not get it all back even if the child shows up to court? Brad says nobody. Kati says it's disclosed at arraignment, unless you're lucky and have a bondsman or corrections officer explain it first. Brad says if you don't work with a bail bondsman, chances are you'll pay it with the assumption that all the money will come back to you.
- Gordon notes that the cash bail machines at the jail charge 8% plus \$10. This is equivalent to a courier fee.
- Bail forms / Kathy Stajduhar
- Kathy states that forms must be filed 30 days before use and cannot contain any reference to cash bail.
- Brad clarifies that no forms should have cash bail on them at all.
- Gordon asks if acting as a courier and delivering \$200 for somebody is OK. Clay says just don't make a business of it. Perri says we would need to look at the facts of each case on a case-by-case basis.
- **Adjourned** (1:30pm)
 - **Motion by Gordon to adjourn.**
 - **Next Meeting:** January 11, 2017 — Copper Room, East Building

2016 Meetings (Noon to 1:30pm)

Jan 13, 2016	Apr 13, 2016	July 13, 2016	Nov 2, 2016
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