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July 24, 2013

OPINION NO. 2013-05

BAIL; BONDS; FEES: Nevada law does not allow bail agents to collect renewal premiums for bonds held open by a court for more than one year.

Scott Kipper, Commissioner of Insurance
Department of Business & Industry
Division of Insurance
1818 East College Pkwy, Suite 103
Carson City, Nevada 89706

Dear Commissioner Kipper:

You have requested an opinion from the Attorney General's Office regarding the legality of charging annual renewal premiums for bail bonds in Nevada.

QUESTION

Does Nevada law allow bail agents to collect renewal premiums for bonds held open by a court for more than one year?

ANALYSIS

Bail is regulated by the Division of Insurance pursuant to the provisions of chapter 697 of the Nevada Revised Statutes (NRS), corresponding regulations, and other applicable law. NRS 697.300 addresses the charges and collections that a Nevada bail agent is permitted to make. NRS 697.300(1)(a) provides:

1. A bail agent shall not, in any bail transaction or in connection therewith, directly or indirectly, charge or collect money or other valuable consideration from any person except for the following purposes:

(a) To pay the premium at the rates established by the insurer, in accordance with chapter 686B of NRS, or to pay the charges for the bail bond filed in connection with the transaction at the rates filed in accordance with the provisions of this Code. *The rates must be 15 percent of the amount of the bond or \$50, whichever is greater.*

NRS 697.300(1)(a) (emphasis added).^{1, 2}

It is a basic tenet of the law of statutory construction that when a statute's language is plain and unambiguous and "the statute's meaning clear and unmistakable, the courts are not permitted to look beyond the statute for a different or expansive meaning or construction." See *DeStefano v. Berkus*, 121 Nev. 627, 629, 119 P.3d 1238, 1239–1240 (2005). It is unequivocal that the language of NRS 697.300(1)(a) references 15 percent as a fixed percentage of the *amount of the bond*; there is no reference to a term or duration. "[W]hen the Legislature chooses one option and not another, it is presumed that the Legislature did so purposely." *Nevada Mining Ass'n v. Erdoes*, 117 Nev. 531, 541 n.27, 26 P.3d 753, 759 n.27 (2001) citing *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967). Pursuant to NRS 178.502, the amount of the bond is determined by the magistrate, judge or justice, and the bond "[r]emains in effect until exonerated by the court." NRS 178.502(2)(b). Any charge for premium on the same bond in addition to the amount expressly provided would violate NRS 697.300(1)(a) and NRS 697.310.³

It appears from your letter that some sureties and bail agents improperly include a provision for annual bond renewal in the contracts signed by consumers; however, it is well settled that contracts made in violation of a regulatory statute are illegal contracts, and have been expressly denounced by the courts and declared void. "*If a contract . . . is at variance with the statutory requirement, it is against public policy and void.*" *State Farm Mut. Auto. Ins. Co. v. Hinkel*, 87 Nev. 478, 484, 488 P.2d. 1151, 1154 (1971) (emphasis added).⁴

¹ Although referenced in the above statute, in 2003, the Nevada Legislature amended NRS 686B.030 making NRS 686B.010–.1799 inapplicable to surety insurance. See NRS 686B.030(1)(h).

² "Premium" means the consideration for insurance, by whatever name called. The term includes any "assessment," or any "membership," "policy," "survey," "inspection," "service" or similar fee or other charge assessed or collected by the insurer or an agent of the insurer in consideration for an insurance contract or its procurement. NRS 679A.015.

³ NRS 697.310 also provides: "Except to the extent permitted by paragraphs (c) and (d) of subsection 1 and subsection 2 of NRS 697.300, a licensee shall not make any charge for the services of the licensee in a bail transaction in addition to the premium or the charge for a bail bond at the rates filed in accordance with the provisions of this Code."

⁴ A contract may or may not survive when an invalid term is severed from the contract. Some contracts may expressly address severability; each contract from which an invalid term is severed will require individual evaluation. See generally *Dredge Corp. v. Wells Cargo, Inc.*, 82 Nev. 69, 73, 410 P.2d 751,

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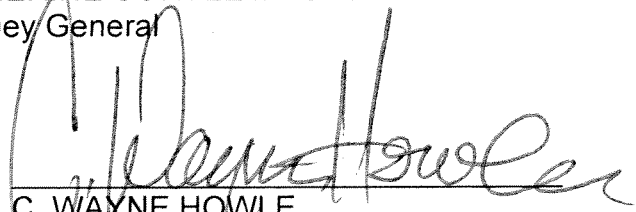
CONCLUSION

Nevada law does not allow bail agents to collect renewal premiums for bonds held open by a court for more than one year.

Sincerely,

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Attorney General

By:



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CWH/JLF