



# **COMMONWEALTH of VIRGINIA**

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June 1, 2009

The Honorable James S. Mathews  
Judge, Norfolk General District Court  
811 E. City Hall Avenue  
Norfolk, Virginia 23510-2772

Dear Judge Mathews:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

### **Issue Presented**

You ask whether a surety bail bondsman who executes a secured bail bond as a disclosed agent-in-fact for the stated corporate surety is personally liable to the Commonwealth when the criminal defendant absconds, and the bond is forfeited.

### **Response**

It is my opinion that a surety bail bondsman who executes a secured bail bond as a disclosed agent-in-fact for the stated corporate surety is not personally liable to the Commonwealth when the criminal defendant absconds, and the bond is forfeited.

### **Applicable Law and Discussion**

Surety bail bondsmen, who must be licensed by the Department of Criminal Justice Services and the State Corporation Commission, sell, solicit, or negotiate surety insurance on behalf of insurers licensed in the Commonwealth.<sup>1</sup> The insurer thereby becomes surety on or guarantees a bond, which assures the performance of terms and conditions ordered as a condition of bail.<sup>2</sup>

A surety bail bondsman, acting as an agent for the surety company, acts through powers of attorney issued to the bondsman from the surety company.<sup>3</sup> Such powers of attorney enable the surety

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<sup>1</sup>See VA. CODE ANN. § 9.1-185 (Supp. 2008), § 9.1-185.5 (2006); VA. CODE ANN. §§ 38.2-1800, 38.2-1814 (2007).

<sup>2</sup>See § 9.1-185 (defining "surety bail bondsman"); VA. CODE ANN. § 19.2-119 (2008) (defining "bond"), § 38.2-121 (2007) (defining "surety insurance"); 6 VA. ADMIN. CODE § 20-250-10 (Supp. 2008) (defining "bond").

<sup>3</sup>See § 38.2-121 (defining "surety insurance"); § 38.2-1801(A) (2007) (deeming that licensed agent is agent of insurer that issues insurance); § 38.2-1833 (Supp. 2008) (governing appointment of agents to sell insurance); § 38.2-2417 (2007) (defining scope of power of attorney).

bail bondsman to execute bail bonds on behalf of the surety company.<sup>4</sup> Section 38.2-2420 recognizes that “[a]ny bond ... executed in the name and on behalf of the insurer as surety under the authority of the power of attorney shall have the same force, effect and validity” as if executed by the insurer itself.

Generally, an authorized agent is not personally liable for contracts entered on behalf of the principal.<sup>5</sup> Absent proof to the contrary, it is presumed that an agent intends to bind the principal.<sup>6</sup> There are several exceptions, *e.g.*, when an agent exceeds the power vested in him by the principal<sup>7</sup> or when the agent expressly agrees to be liable.<sup>8</sup> The relevant licensure provisions of the *Virginia Code* do not affect these general legal principles.

A surety bail bondsman serves only as an agent-in-fact for the surety company and binds the surety company to bail bonds executed on behalf of the surety company. As such, a surety bail bondsman operating within the bounds of his authority cannot be held personally liable to the Commonwealth for forfeited bonds when a defendant fails to comply with a condition of the bond.

### Conclusion

Accordingly, it is my opinion that a surety bail bondsman who executes a secured bail bond as a disclosed agent-in-fact for the stated corporate surety is not personally liable to the Commonwealth when the criminal defendant absconds, and the bond is forfeited.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'W C Mims', with a stylized flourish at the end.

William C. Mims

3:1425; 1:941/09-025

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<sup>4</sup> See §§ 38.2-2416, 38.2-2417, 38.2-2420 (2007).

<sup>5</sup> *Richmond Union Passenger Ry. Co. v. N.Y. & Sea Beach Ry. Co.*, 95 Va. 386, 395, 28 S.E. 573, 575 (1897); 1A MICHIE’S JUR. *Agency* § 71, at 814 (2004).

<sup>6</sup> *Id.*

<sup>7</sup> 1A MICHIE’S JUR., *supra* note 5.

<sup>8</sup> *Richmond Union*, 95 Va. at 395, 28 S.E. at 575.