Constitutionality of bail bond agent solicitation law

Number: INFORMAL

Date: May 14, 2019

The Honorable Cord Byrd
House of Representatives, District 11
308 House Office Building
402 South Monroe Street
Tallahassee, Florida 32399

Dear Representative Byrd:

Thank you for your inquiry of March 14, 2019, requesting an opinion as to whether section 648.44(1)(b), Florida Statutes (2018), violates a bail bond agent's right to commercial speech under the First Amendment of the United States Constitution. The provision prohibits bail bond agents from distributing print advertising and written information, unless requested, in jails, prisons, detention centers, and courts. You suggest that the Fifth Circuit Court of Appeals found a First Amendment violation with regard to a comparable Texas statute in *Pruett v. Harris County Bail Bond Board*. 499 F.3d 403 (5th Cir. 2007), *cert. den.*, 552 U.S. 1181 (2008). You also ask whether the statutory provision applies to "informational signboards," citing an opinion by the Commissioner of the California Department of Insurance approving the display of signboards in jails and other detention facilities. Comm's Op., Calif. Dep't of Ins. (Dec. 20, 2001), available at /files/pdf/page/04D1455FD98B9E21852583FA007107D4/Opinion-December-20-2001.pdf. You do not define "informational signboard" other than to say they "allow access to bail agent information." Signboards were described in the California insurance opinion as "a printed presentation providing basic contact information regarding the name, address and telephone number of licensed bail agents, and/or an advertisement or compilation of the individual advertisements of licensed bail agents." *Id.* at 2.

This office is often called to defend the constitutionality of Florida Statutes and, thus, presumes the constitutionality of the statutes. Accordingly, it is the policy of the Attorney General's office not to issue opinions on questions regarding the constitutionality of existing statutes or ordinances. *See* Op. Att'y Gen. Fla. 2005-51 (2005), Letter to Tegan Slaton (Aug. 30, 1999). As stated on the website of the Office of the Attorney General: "In order not to intrude upon the constitutional prerogative of the judicial branch, opinions generally are not rendered on … questions requiring a determination of the constitutionality of an existing statute or ordinance." http://myfloridalegal.com/pages.nsf/Main/dd177569f8fb0f1a85256cc6007b70ad. I offer the following general comments in an effort to be of assistance.

Section 648.44(1)(b), Florida Statutes, appears significantly different from, and more narrowly tailored than, the Texas statute at issue in *Pruett*. A 2012 decision by an Ohio Court of Appeals may be helpful to your analysis. See In *re Henneke*. 2012 WL 764888 (Ohio Ct. App. 2012).

Unlike the California insurance regulation barring solicitation without defining it, section 648.44(1)(b), Florida Statutes, defines "solicitation" to include "the distribution of business cards, print advertising, or other written or oral information directed to prisoners or potential

indemnitors, unless a request is initiated by the prisoner or a potential indemnitor." The Florida statute also articulates the advertising that must be allowed: "Permissible print advertising in the jail is strictly limited to a listing in a telephone directory and the posting of the bail bond agent's or agency's name, address, and telephone number in a designated location within the jail." The statute does not create a "short list" or "exclusive list" of bail bond agents.

I hope these general comments are useful to you.

Sincerely,

Ellen B. Gwynn
Senior Assistant Attorney General

EBG/tsh