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OPINION	:	No. 80-102
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of	:	<u>April 4, 1980</u>
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SUBJECT: IMMIGRATION BONDS—A licensed bail agent is not authorized by the bail agent's license to execute immigration bonds (1) conditioned for the delivery of an alien or (2) for the release of an alien under exclusion proceedings.

The Honorable Richard Alatorre, Assemblyman, Fifty-Fifth District, has requested an opinion on a question which we have rephrased as follows:

May a licensed bail agent execute immigration bonds (1) conditioned for the delivery of an alien or (2) for the release of an alien under exclusion proceedings?

CONCLUSION

A licensed bail agent is not authorized by the bail agent's license to execute immigration bonds (1) conditioned for the delivery of an alien or (2) for the release of an alien under exclusion proceedings.

ANALYSIS

The question presented here is whether a person holding a bail agent's license (Ins. Code, §§ 1800, 1801, 1802) is authorized to execute certain immigration bonds. We conclude that such question must be answered in the negative. In order to fully examine the question before us, we must first determine to what extent, if any, this matter is preempted by federal law.

The provision which is the heart of the federal preemption doctrine is the supremacy clause of the Constitution of the United States, found in article VI, clause 2 thereof:

“This Constitution, and the laws of the United States shall be the supreme law of the land; . . . anything in the Constitution or laws of any State to the contrary notwithstanding.”

The United States Supreme Court has reviewed and summarized the preemption doctrine as follows:

“The Court's prior cases indicate that when a State's exercise of its police power is challenged under the Supremacy Clause, ‘we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.’ *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Under the relevant cases, one of the legitimate inquiries is whether Congress has either explicitly or implicitly declared that the States are prohibited from regulating the various aspects of oil-tanker operations and design with which the Tanker Law is concerned. As the Court noted in *Rice, supra*, at 230:

“‘[The congressional] purpose may be evidenced in several ways. The scheme of federal regulations may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. *Pennsylvania R. Co. v. Public Service Comm'n.* 250 U.S. 566, 569; *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148. Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws of the same subject. *Hines v. Davidowitz*, 312 U.S. 52. Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. *Southern R. Co. v. Railroad Commission*, 236 U.S. 439; *Charleston & W. C. R. Co. v. Varnville Co.*, 237 U.S. 597; *New York Central R. Co. v. Winfield*, 244 U.S. 147; *Napier v. Atlantic Coast Line*

R. Co., supra.’ Accord, *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 633 (1973).

“Even if Congress has not completely foreclosed state legislation in a particular area, a state statute is void to the extent that it actually conflicts with a valid federal statute. A conflict will be found ‘where compliance with both federal and state regulations is a physical impossibility . . . ,’ *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–143 (1963), or where the state ‘law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’ *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *Jones v. Rath Packing Co., supra*, at 526, 540–541. Accord, *De Canas v. Bica*, 424 U.S. 351, 363 (1976).” (*Ray v. Atlantic Richfield Co.* (1978) 435 U.S. 151, 157–158.)

An examination of pertinent federal statutes and regulations, played against the above authorities on preemption, is now in order, looking to whether federal law might preclude the state from regulating the field.

The issuance of bonds in immigration proceedings is authorized and governed by federal statutes and regulations. 8 United States Code section 1252(a), dealing with the apprehension and deportation of aliens, provides:

“Pending a determination of deportability in the case of any alien as provided in subsection (b) of this section, such alien may, upon warrant of the Attorney General, be arrested and taken into custody. Any such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability . . . be released under bond in the amount of not less than \$500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe”

The Code of Federal Regulations provides for proceedings to determine deportability of aliens. Set forth therein are the administrative procedures and remedies available to aliens (8 C.F.R. § 242.1 *et seq.*) including provisions dealing with the issuance of bonds pending said administrative proceedings (8 C.F.R. § 242.2(b)). These regulations deal specifically with the issuance of immigration bonds. 8 Code of Federal Regulations, section 103.6(a) provides that “all surety bonds posted in immigration cases shall be executed on Form 1–352.”

The Immigration and Naturalization Service has set forth in its Form I-352 four¹ situations where immigration bonds may be posed:

- (1) Bond for maintenance of status and departure of nonimmigrant alien;
- (2) Bond conditioned for the delivery of an alien (bond for release from custody under warrant of arrest);
- (3) Bond that alien shall not become a public charge;
- (4) Bond for release of alien under exclusion proceedings (bond that alien will deliver himself into the custody of an immigration officer on demand).²

An acceptable surety³ is either (1) a “company” holding a certificate from the Secretary of the Treasury under 6 United States Code sections 6–13⁴ as an acceptable surety on federal bonds or (2) a “surety”⁵ who deposits cash or United States bonds or notes. Thus, only “surety companies” approved by the Secretary of the Treasury and holding a certificate from him as an acceptable surety may issue immigration bonds. (6 U.S.C. §§ 6–13; 8 C.F.R. § 103.6(b).) Immigration bonds issued by “acceptable surety companies” must be executed by an “authorized agent” of such a company. The “agent” must possess a “power of attorney” authorizing said agent to execute immigration bonds on behalf of the surety company. (8 C.F.R. § 103.6(a).)

Accordingly, under federal law and regulation, any person who has a sufficient power of attorney authorizing the execution of immigration bonds (Form I-352) on behalf of an “acceptable surety company” may execute said bond. The power of such a person to act on behalf of a surety company, however, may be regulated or limited by state law if not in conflict with federal laws or regulations⁶ (see *Ray v. Atlantic Richfield Co.*, *supra*. 435 U.S. at p. 158; *Younger v. Jensen* (1980) 26 Cal. 2d 397, 408–409), and it is to this body

¹ The question before us only relates to (2) and (4) above.

² See also 8 United States Code section 1252 *et. seq.*; 8 Code of Federal Regulations, sections 103.6(a), 103.6(c) and 242.1 *et seq.*

³ 8 Code of Federal Regulations, section 103.6(b).

⁴ Such approved companies are listed in Treasury Circular 570 with interim changes appearing in the Federal Register.

⁵ A private person, or a company not in the “surety” business, may “deposit” the second type of security. Since this collateral is not a “bond” but the equivalent of cash, it is not contemplated by the question posed and not dealt with in this opinion.

⁶ For similar treatments of the federal preemption doctrine, see our discussions in 61 Ops. Cal. Atty. Gen. 159, 167–169 (1978) and 62 Ops. Cal. Atty. Gen. 448, 452–453 (1979).

of state law we now turn.

We must determine whether there is any limitation placed upon a person by the state, not in conflict with federal law, which precludes such a person from serving as an “agent” for a surety company regarding the execution of immigration bonds. Specifically, we must determine whether holding a bail agent’s license (Ins. Code, §§ 1800, 1801, 1802) entitles such state licensee, under state law, to so act. In order to fully comprehend what such a licensee may or may not do, we should first review the pertinent statutes under which such a person is authorized to act.

Bail licenses are issued in California under the provisions of Insurance Code section 1800 *et seq.*

“An insurer shall not execute an undertaking of bail except by and through a person holding a bail license issued as provided in this chapter. A person shall not in this State solicit or negotiate in respect to execution or delivery of an undertaking of bail or bail bond by an insurer, or execute or deliver such an undertaking of bail or bail bond unless licensed as provided in this chapter, but if so licensed, such person may so solicit, negotiate and effect such undertakings or bail bonds without holding or being named in any license specified in Chapter 5 of this part.” (Ins. Code, § 1800.)

One type of bail license is a bail agent’s license. (Ins. Code, § 1801.) Insurance Code section 1802 states:

“A bail agent’s license by its terms permits the licensee to solicit, negotiate, and effect undertakings of bail on behalf of any surety insurer while there is in effect an unrevoked notice of appointment of such insurer filed pursuant to Section 1802.1”

Insurance Code section 1802.1 provides:

“Every applicant for a license to act as bail agent must file with the commissioner a notice of appointment executed by a surety insurer or its authorized representative authorizing such applicant to execute undertakings of bail and to solicit and negotiate such undertakings on its behalf”

Insurance Code section 1800.4, defining “bail bond,” provides:

“As used in this chapter, the term ‘bail bond’ includes any contract . . . for or method of release of person arrested or confined on

account of any actual or alleged violation of the provisions of any law of this or any other State or of any municipality in the State of California, including any release by means of cash or other property deposited in lieu of bail under the provisions of sections 1295 and 1298 of the Penal Code whereby the attendance in court when required by law and obedience to orders and judgment of any court by the person released is guaranteed.”

Under Insurance Code sections 1802 and 1802.1, a bail agent is only authorized to execute “bail bonds” on behalf of a surety insurer. Accordingly, under California law, which we find not to be in conflict with federal law as this is an area where the federal government has not spoken,⁷ such a licensee may only execute “immigration bonds” on behalf of an insurer if such bonds can also be deemed “bail bonds.”⁸ To determine, then, whether immigration bonds, including the two with which we are here concerned, are “bail bonds” is our next task.

Under Insurance Code section 1800.4, a person holding a bail license is empowered to execute a “bail bond” to “guarantee” the “attendance in court” of a person arrested or confined for a violation of a “state” or “municipal” law. It is significant that the Legislature employed the word “court” in framing the statute. Likewise, the reference only to violations of state or local laws is to be noted.

When construing a statute, we should look to the principles of statutory construction. We must “ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (*Select Base Materials v. Board of Equalization* (1959) 51 Cal. 2d 640, 645.) “Legislative intent” is discerned at the onset by looking to the words used in the statute, giving them effect according to their usual and ordinary meaning. (*Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.) Words should not be added to an unambiguous statute (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155) unless the results are absurd. (*Nightingale v. State Personnel Board* (1972) 7 Cal. 3d 507, 513.) The explicit language of the statute is plain and unambiguous. Bail licensees may only issue bonds in criminal matters involving *judicial* proceedings.

Immigration procedures (8 U.S.C. § 1252 *et seq.*) are administrative, not judicial. “The purpose of bail is to assure the defendant’s attendance in court when his presence is

⁷ See *Hancock v. Train* (1976) 426 U.S. 167, 178–180; *Leslie Miller, Inc. v. Arkansas* (1956) 352 U.S. 187, 188–190; *Johnson v. Maryland* (1920) 254 U.S. 51, 55, 57; *United States v. City of Pittsburg, Cal.* (ND. Cal. 1979) 467 Fed. Supp. 1080, 1086–1087.

⁸ Bail agents must also file with the Insurance Commissioner a notice of appointment executed by a surety insurer authorizing such agent to transact a “bail” business on its behalf. (Ins. Code, §§ 1802, 1802.1.)

required . . .” (17 Cal. Jur. 3d, Bail and Recognizance, § 413, p. 746.) Immigration proceedings do not involve a court setting. They, also, are not criminal in nature. (*Woodby v. Immigration Service* (1966) 385 U.S. 276, 285.) A deportation proceeding “is not a criminal proceeding and has never been held to be punishment” (*Carison v. Landon* (1951) 342 U.S. 524, 537) and has been consistently classified as a civil rather than a criminal procedure. (*Harisiades v. Shaughnessy* (1951) 342 U.S. 580, 594.) Thus, immigration bonds can be distinguished from bail bonds as immigration bonds are (1) civil in nature (not criminal), (2) issue out of a civil, administrative proceeding (not criminal and (3) require an alien to submit to the authority or jurisdiction of an immigration officer (not a court).

Accordingly, we conclude that immigration bonds are not “bail bonds” within the meaning of Insurance Code section 1800.4. Under our analysis, then, a licensed bail agent is not authorized in California to execute immigration bonds on behalf of an insurer. We find nothing in the Insurance Code, however, to preclude a bail agent from holding an additional license⁹ which may authorize such person to act in another capacity.

Based upon the foregoing discussion, we conclude that a licensed bail agent is not authorized by the bail agent’s license to execute immigration bonds on behalf of a surety company (1) conditioned for the delivery of an alien or (2) for the release of an alien under exclusion proceedings.

⁹ See, for example, Insurance Code sections 1621, 1625, 1631, 1632, 1731 and 1802.6. We do not consider, however, what kind of license California law may require, if any, to authorize a person to execute immigration bonds on behalf of a surety insurer.