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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 17, 2001

The Honorable June Miller
Clerk of Court, Union County
P.O. Box 200
Union, South Carolina 29379

Re: Approving Sureties and Finalizing Bonds

Dear Ms. Miller:

In a letter to this Office, you indicate that you "need an opinion concerning bonds that have been set by a circuit court judge." Specifically, you present the following:

If a defendant was out on bond (personal recognizance, etc.) and violated this bond and the second one was set by the circuit court judge. Does the Clerk of Court have to approve the surety and finalize this bond or can the magistrate handle all of it.

You also indicate that you "need to know if the second one must be set by the judge."

By way of background you state that you "have always been told that a bond set by the circuit judge must be handled by the Clerk of Court, but our Magistrate says it doesn't matter."

Pursuant to S.C. Code Ann. §17-15-50, "[t]he court may, at any time after notice and hearing, amend the [bond] order to impose additional or different conditions of release." The court, at the time of the amendment, would have the authority to impose the same conditions of release as provided for in Section 17-15-10, including "[r]equir[ing] the execution of an appearance bond in a specified amount with good and sufficient surety or sureties approved by the court ..." While not mentioned specifically, it is probably appropriate for the same court which sets a bond requiring "good and sufficient surety" to "approve" the surety or sureties as required by Section 17-15-10. Accordingly, if the circuit court amends the conditions of a defendant's bond, it is my opinion that the clerk of that court should approve and finalize the bond. Of course, once the defendant is indicted, "a magistrate has no jurisdiction to act in a general sessions case." See OP. ATTY. GEN. (Dated August 28, 1970). Accordingly, after indictment, it is likely that a magistrate's court would lack the jurisdiction to approve a bond set by a circuit court judge.

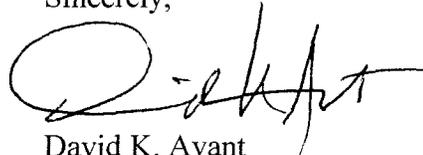
*Respectfully,
Charlie Condon*

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As for your second question, this Office has previously opined that "... with respect to a case beyond the jurisdiction of the magistrate to try, the bonding magistrate retains jurisdiction to alter or amend its order setting bond or enforce the conditions thereof up until the time of indictment by the grand jury." See OP. ATTY. GEN. (Dated July 5, 1995). Further, this Office has also opined that, pursuant to State v. Keenan, 278 S.C. 361, 296 S.E.2d 676 (1982), and Article V, Section 11 of South Carolina's Constitution, a circuit court judge would be authorized to amend a bond set by a magistrate. See OP. ATTY. GEN. (Dated March 17, 1986). Accordingly, prior to indictment, the bond may be amended by either the magistrate or the circuit court judge. Again, after indictment, only a circuit court judge possesses jurisdiction to alter or amend a defendant's bond.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "David K. Avant". The signature is fluid and cursive, with a large initial "D" and "A".

David K. Avant
Assistant Attorney General

DKA/an