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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 7, 1997

Russell B. Long, Esquire
City Prosecutor for Myrtle Beach, SC
7400 North Kings Highway
First Citizens Bank Building, 2nd Floor
Myrtle Beach, South Carolina 29572

Re: Informal Opinion

Dear Mr. Long:

As the city prosecutor for the Municipal Court of Myrtle Beach, you question the use of pre-set bond amounts for so-called "non-victim" offenses such as those involving intoxication and the like. This precise issue was addressed in an Opinion of this Office dated December 22, 1987, a copy of which is enclosed. There, we noted that "the collection of predetermined bond for traffic offenses by municipal courts prior to trial is standard procedure for most courts because of the inability of police officers to collect roadside bonds." However, we concluded that predetermined bonds were not authorized under the law, stating as follows:

[a] prior opinion of this office dated September 12, 1978 dealt with the question of whether a magistrate is authorized to set bail by telephone instead of having a defendant brought personally before him. The opinion indicated that the practice of setting bail by telephone is not in keeping with the provisions of Sections 17-15-10 et seq. of the Code. Pursuant to Section 17-15-10, the determination of bail for an individual charged with a noncapital offense which is triable in magistrate's or circuit court is to be made "... at ... (the accused's) ... appearance before any such courts...." ... The opinion further noted that in evaluating what conditions of bail

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are to be imposed, the court may take into consideration several criteria as set forth in Section 17-15-30.

An opinion of this Office dated April 26, 1979 responded to the question as to whether a law enforcement officer is authorized to set a bond after an individual has been incarcerated or must the person be carried before a judicial officer for the setting of bond. The opinion again indicated that Sections 17-15-10 et seq. of the Code mandate the necessity of a hearing before a judicial officer whereby a determination may be made as to the release of an individual on bond. The opinion concluded in stating that the setting of bond is a judicial function and consequently an individual must be carried before a judicial officer prior to being released on bond. Similarly, an opinion of this Office dated August 9, 1982 stated that research had not revealed any statute authorizing money which is deposited in lieu of a bond or recognizance to be paid by an accused to an employee of a jail or detention center.

The South Carolina Bench Book for Magistrates and Municipal Court Judges similarly references the requirement for a hearing before a judicial officer prior to releasing a defendant on bail. See: pp. III 40-47. Also the bail bond forms as printed in the Bench Book reference a hearing and personal appearance before the judicial officer setting the bond. See: pp. VI 13-17. Form 1 is utilized in situations where a defendant is released on personal recognizance while Form 2 is to be used if the security is cash in lieu of bond, cash percentage in lieu of bond or other sufficient surety.

Consistent with the above prior opinions of this Office and the instructions to the magistrates and municipal court judges as set forth in the Bench Book, it appears that the collection of predetermined bonds without a bail bond hearing being held is not in keeping with the provisions of Section 17-15-10 et seq. of the Code. As stated, such statutes provide that any decision as to bail is to be made upon the appearance of a defendant before a court. (emphasis added).

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This Opinion remains the Opinion of this Office. Accordingly, this Office continues to be of the view that predetermined bonds are without authorization and a hearing before a judicial officer is necessary to set bond.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an
Enclosures