

# The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3970

December 22, 1987

George A. Markert  
Assistant Director  
South Carolina Court Administration  
P. O. Box 50447  
Columbia, South Carolina 29250

Dear George:

In a letter to this Office you indicated that in certain areas predetermined bail is being established for certain offenses within the jurisdiction of a municipal court, such as simple assault and disorderly conduct. You stated 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. In our telephone conversation you indicated that typically the predetermined bonds are being collected by clerks with no bail bond hearing being held before the municipal judge.

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 of such courts..."<sup>1/</sup> The opinion further noted that in evaluating what conditions of bail 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

---

<sup>1/</sup> Pursuant to Section 14-25-45 of the Code municipal court judges have the same powers as a magistrate to set bail.

George A. Markert  
Page 2  
December 22, 1987

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.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR:wle

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions