

1979 WL 43230 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 26, 1979

\*1 The Honorable Jack M. Allison  
Cherokee County Magistrate's Court  
Cherokee County Courthouse  
Gaffney, South Carolina 29340

Dear Judge Allison:

In a recent letter sent in response to a telephone conversation, you asked if it was proper for a law enforcement officer to set a bond in a given situation after a particular individual had been incarcerated or must that person be carried before a judicial officer for the setting of a bond. As to the term law enforcement officer, you referenced highway patrolmen, deputy sheriffs, and jailers.

A review of [Section 17-15-10 et seq.](#), of the [Code of Laws of South Carolina](#), 1976, indicates that as to a person charged with a non-capital offense which is triable in the magistrate's, county, or circuit court, the determination as to bail is to be made ' . . . at . . . (the accused) . . . appearance before any such courts.' Therefore, such section appears to indicate the necessity of a hearing before a judicial officer whereby a determination may be made as to the release of an individual on bond. Other sections indicate that in evaluating conditions of bail, the person admitting to bail, such as a magistrate, may take into consideration several criteria more particularly set out in Section 17-15-30. Therefore, again, a hearing before a judicial officer appears to be required.

As to traffic cases, a previous opinion of this Office, 1967 Ops. Att'y Gen. No. 2298, p. 118, indicated that the issuance of a uniform traffic ticket does not empower a law enforcement officer to set and accept cash bail. Instead, the opinion stated, 'since the setting of bail is a judicial function, this authority can be granted to police officers only by action of the General Assembly.' Please be advised however that there are certain statutes allowing certain law enforcement officers to accept a cash bail. [Section 23-5-50 of the 1976 Code](#) of Laws specifically authorizes a state highway patrolmen to accept money as bail from an individual charged with the violation of any traffic or other law in lieu of bringing such person before a judicial officer. Similarly, [Section 50-3-410 of the 1976 Code](#) of Laws authorizes such a practice for state game wardens as to individuals charged with violating fish or game laws. Cash bonds similarly may be accepted from violators of litter statutes pursuant to [Section 16-11-710 of the 1976 Code](#) of Laws. Act 1151 of the 1972 Acts and Joint Resolutions of the General Assembly of South Carolina permits the Richland County sheriff or any of his deputies to accept a cash bond from a traffic offender in lieu of bringing such person before a judicial officer.

Therefore, subject to the exceptions noted in the preceding paragraph, the setting of bond is a judicial function and consequently a person must be carried before a judicial officer prior to being released on bond.

If there is anything further, do not hesitate to contact me.

Sincerely yours,

\*2 Charles H. Richardson  
Assistant Attorney General

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