

1978 S.C. Op. Atty. Gen. 188 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-156, 1978 WL 22624

Office of the Attorney General

State of South Carolina

Opinion No. 78-156

September 12, 1978

***1 SUBJECT: Bail**

Inasmuch as a hearing is necessary to set bail, the practice of magistrates setting bail by telephone is not authorized.

TO: The Honorable Jack Allison
Cherokee County Magistrate

QUESTION:

Is a magistrate authorized to set bail by telephone instead of having the defendant brought personally before him?

STATUTES:

[Sections 17-15-10, et seq., Code of Laws of South Carolina, 1976.](#)

DISCUSSION:

Please be advised that as to your question as to whether it is proper for a magistrate to set bond by telephone instead of having the defendant brought personally before him, in the opinion of this Office, such a practice is not in keeping with the provisions of [Sections 17-15-10, et seq.](#), of the 1976 Code of Laws. These provisions relating to bail and recognizances provide that in evaluating what conditions of bail are to be imposed, the person admitting to bail, such as the magistrate, may take into consideration several criteria more particularly set out in Section 17-15-30. Furthermore, [Section 17-15-10](#) specifically provides that as to a person charged with a noncapital offense which is triable in the magistrate's, county, or circuit court, the determination as to bail is to be made ' . . . at . . . (the accused's) . . . appearance before any such courts.' These factors seem to indicate the necessity of a hearing thereby resulting in a determination that a situation whereby bond is set by telephone is in the opinion of this Office improper.

CONCLUSION:

Inasmuch as a hearing is necessary to set bail, the practice of magistrates setting bail by telephone is not authorized.

Charles H. Richardson
Assistant Attorney General

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