

1976 S.C. Op. Atty. Gen. 292 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4437, 1976 WL 23054

Office of the Attorney General

State of South Carolina

Opinion No. 4437

September 1, 1976

*1 Honorable John Lindsay
Chief Insurance Commissioner
P. O. Box 4067
Columbia, South Carolina 29240

Dear Mr. Lindsay:

You have requested an opinion from this Office as to whether the Insurance Laws of the State of South Carolina (Title 37, South Carolina Code) apply to the business of bail bonds. You have further requested this Office to review a proposed regulation if the Insurance Department has the obligation and authority to regulate such business.

Simply stated, the bail bond business can be factually summarized as follows:

When a person is arrested for committing a certain crime, he may be released from custody upon his promise to be present at the time of his or her trial. In some cases, to insure the defendant's presence, a bond is required. The bond varies in amount and either money or property may be pledged to insure the defendant's appearance. If a defendant does not have the necessary assets to satisfy this bond requirement, the defendant may pay a surety which in turn guarantees the full amount of the bond, in the event the surety does not have the defendant present at the time of the call of the defendant's case. Example: A defendant is arrested for robbery and a \$50,000.00 bond is set. The defendant pays a bail bond company \$5,000.00 in return for that company's guaranteeing the presence of the defendant or the payment of \$50,000.00.

In the opinion of this Office, a person or company, engaged in the bail bond business is transacting 'Surety insurance,' as that term is defined in Code § 37-109(e). It is further the opinion of this Office that the Insurance Department is mandated to regulate such companies under Title 37 as it applies to all insurance companies and particularly under Code § 37-601, et seq., relating to Surety Companies.

A 'bail bond' is a contract between the government on the one side and the principal and surety on the other. [Joelson v. United States](#), 287 F. 106, 108.

'Surety insurance' is defined by Code § 37-109, as follows:

'... [M]eaning becoming surety on, or guaranteeing the performance of any lawful contract except an insurance contract; becoming surety on, or guaranteeing the performance of any bonds and undertaking required or permitted in any agency or instrumentality of any government.'

In [Philco Finance Corp. v. Mehlman](#), 245 S.C. 139, 139 S.E.2d 475 (1964), this Court defined surety:

'In a broad sense a surety is one who becomes responsible for the debt, default, or miscarriage of another, but in a narrower sense, a surety is a person who binds himself for the payment of a sum of money, or for the performance of something else, for another who is already bound for such payment or performance.'

This Office can find no distinction in principle between a surety on a governmental construction contract and a surety or a contract between the State and a defendant charged with a criminal offense who is released upon a surety pending final disposition of his case.

*2 There has been some question raised as to the effect of [Calhoun Life Ins. Co., et al. v. Gambrell, et al.](#), 245 S.C. 406, 140 S.E.2d 774 (1965), on the Insurance Department's authority to regulate the bail bond business. In [Calhoun](#) no Code section could be pointed out that covered the regulating of both rates and commissions paid on credit life and credit health and accident insurance. In this case, once bail bonding is defined as a 'surety insurance company,' the Insurance Department has the same authority to regulate the bail bond business as it has any other type surety company. [Calhoun](#) is not applicable to this situation.

You have also requested an opinion as to the submitted proposed rules and regulations. After review of same, this Office can find no legal objection to them as long as it is understood that such cannot be a substitute for statutory laws and are only adopted so as to fill in the details for the implementation of the applicable laws of Title 37 of the Code. See, [South Carolina State Highway Department v. Harbin](#), 226 S.C. 585, 86 S.E.2d 466.

In conclusion, it is the opinion of this Office that the Insurance Department has the obligation and requisite statutory authority to regulate the bail bond business.

Sincerely,

A. Camden Lewis
Assistant Attorney General

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