

1973 WL 27689 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 20, 1973

***1 In Re: Bad Checks, Parking Tickets, Traffic Tickets.**

Honorable Kenneth E. Love

Magistrate

1328 Huger Street

Columbia, South Carolina

Dear Magistrate Love:

You have propounded several questions relating to law enforcement:

I.

Can a law enforcement officer, either a city police officer, a county deputy sheriff, or a State Highway officer require from a defendant a fine or bond when the defendant is arrested?

ANSWER: A law enforcement officer is empowered to accept bond or bail from a defendant only when specifically authorized by statute to do so.

II.

Can the above legal officers require a defendant to post a cash bond before being released from detention on the charges of (a) bad checks, (b) parking violations, (c) traffic violations?

ANSWER: The answer to this question is the same as for question I.

III.

Can a legal law enforcement officer be directed to collect from a defendant bond money for the following violations: (a) bad checks, (b) parking violations (c) traffic violations?

ANSWER: The answer to this question is the same as for question I.

IV.

If collection of such bond money is obtained by law enforcement officers before trial is there an abuse of process?

ANSWER: Whether or not such collection constitutes abuse of process depends on the statutory authority possessed by the officer and the facts of the individual case.

V.

If a person is arrested on a bad check violation or a parking ticket violation or a traffic violation does the arresting law enforcement officer have the power or authority to decide the bond and can that person be detained under the color of the law until the posting of such bond?

ANSWER: The setting of bond in a criminal case is a judicial function. It follows that a law enforcement officer is not empowered to set bond unless he is authorized to do so by statute. When bond is set or accepted by a law enforcement officer without statutory authority to do so, the facts in the individual case determine whether or not the defendant has valid cause to complain.

VI.

What, if any, are the legal differences between enforcement of the law on (a) bad checks (b) parking tickets (c) traffic tickets?

ANSWER: This question is too general. It is not possible for me to determine with reasonable specificity the information desired.

I shall be happy to discuss with you in person at your convenience any question that arises out of your official duties as magistrate.

Very truly yours,

Joseph C. Coleman
Deputy Attorney General

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