HENRY MCMASTER
ATTORNEY GENERAL

June 14, 2010

David Belton, Associate General Counsel
South Carolina Department of Insurance
P. O. Box 100105
Columbia, South Carolina 29202-3105

Dear Mr. Belton:

You have requested that this office review its opinion of January 9, 2008 in which we concluded that "...a bail bondsman from outside South Carolina would appear to have the authority to arrest a defendant in South Carolina on a warrant from another state revoking the defendant's bond in that state." Reference was made in that opinion to another previous opinion of this office dated December 20, 1977 which stated that

> ...it is generally accepted at common law that the right of a surety on a bail bond to take the principal into custody, deliver him to the proper authority and be relieved of his obligation under the bond does exist. The United States Supreme Court in Taylor v. Tainter, 21 L.Ed.2d 287 (1873) stated:
>
> > [w]hen bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge; and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another State; may arrest him on the Sabbath; and, if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the rearrest by the sheriff of an escaping prisoner.

You referenced the provisions of S.C. Code Ann. § 38-53-80 which state:

> [n]o person may act in the capacity of a professional bondsman, surety bondsman, or runner or perform any of the functions, duties, or powers prescribed for professional or surety bondsmen or runners under the provisions of this chapter

> unless that person is qualified, except for an accommodation bondsman, licensed in accordance with the provisions of this chapter. No license may be issued to a professional bondsman, surety bondsman, or runner except as provided in this chapter.

(emphasis added). S.C. Code Ann. § 38-53-90 states that "...[b]efore being issued....(a)...license, every applicant for a license as a professional bondsman, surety bondsman, or runner shall certify...that he:...(b) is a resident of this State...." Therefore, you have questioned whether an individual who is not a resident of this State and, therefore, cannot be licensed in this State as a bondsman would have the authority to arrest a defendant in South Carolina on a warrant from another state revoking the defendant's bond in that state.

The United States Supreme Court in Saenz v. Roe, 526 U.S. 489 at 501-502 (1999) determined that

> ...by virtue of a person's state citizenship, a citizen of one State who travels in other States, intending to return home at the end of his journey, is entitled to enjoy the "Privileges and Immunities of Citizens in the several States" that he visits... This provision removes "from the citizens of each State the disabilities of alienage in the other States." Paul v. Virginia, 8 Wall. 168, 180, 19 L.Ed. 357 (1868) ("[W]ithout some provision ... removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists"). It provides important protections for nonresidents who enter a State whether to obtain employment, Hicklin v. Orbeck, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), to procure medical services, Doe v. Bolton, 410 U.S. 179, 200, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973), or even to engage in commercial shrimp fishing, Toomer v. Witsell, 334 U.S. 385, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948). Those protections are not "absolute," but the Clause "does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States." Id., at 396, 68 S.Ct. 1156.

Moreover, in its decision in Wrenn Bail Bond Service, Inc. v. City of Hanahan, 335 S.C. 26, 515 S.E.2d 521 (1999), the State Supreme Court dealt with a case where a bail bondsman brought an action challenging a city's imposition of a business license fee. The Court concluded that the facts in that case did not support the imposition of the fee and stated that.

> [g]enerally, the determination whether a party is "doing business" in a certain jurisdiction is dependent upon the facts of each case. See Sanders v. Columbian Protective Ass'n, 208 S.C. 152, 37 S.E.2d 533 (1946). We find the facts in this case do not support imposition of the business license fee.

> The only fact connecting City with the actual transaction between the parties is that Wrenn provided a service to one of its residents which City argues constitutes doing business under the business license ordinance. In Pee Dee Chair Co. v. City of Camden, 165 S.C. 86, 162 S.E. 771 (1932), this Court held a single act does not constitute doing business for purposes of a business license fee where there are no facts to indicate it is not an isolated instance but an intention to engage in business. We find nothing in this record to indicate Wrenn's intent to engage in a continuing business as bail bondsman for residents of City....(emphasis added).

335 S.C. at 29-30. Therefore, the Court determined that a single act did not constitute "doing business" so as to require payment of a license fee.

As to the question addressed here as to whether the State can require an out-of-state bondsman to be licensed in South Carolina in order to arrest a defendant in South Carolina on a warrant from another state revoking the defendant's bond in that state, this office stands by its earlier conclusion set forth above. Therefore, in the opinion of this office, an out-of-state bondsman, consistent with Taylor v. Tainter, supra, can come into South Carolina to arrest a defendant on a warrant from another state revoking that defendant's bond in that state without being licensed by this State. To require that out-of-state bondsman to also be licensed in South Carolina would be discriminatory. Such discrimination, based upon residency, would, in the opinion of this office, violate the privileges and immunities clause of the federal Constitution. See: Hicklin, supra. Therefore, the determination set forth in Taylor v. Tainter would still apply notwithstanding the requirements of Sections 38-53-80 and 38-53-90.

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General