

The State of South Carolina



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March 17, 1986

The Honorable George W. Hartzell
Municipal Judge, Town of Cheraw
P. O. Box 111
Cheraw, South Carolina 29520

Dear Judge Hartzell:

In a letter to this Office you questioned whether a municipal court judge is authorized to issue a bench warrant requiring that a defendant charged with a general sessions court offense who previously had been released on bond by such judge, be committed to jail for failing to comply with the terms of his bond. You referenced a situation where a defendant is released pursuant to the execution of bail bond form no. 2 which authorizes the imposition of conditions of release. Such form provides for an acknowledgement by the defendant as follows:

I understand that if I violate any condition of this order, including any conditions included on the reverse side of this order, a warrant for my arrest will be issued.

You particularly questioned whether a municipal court judge could issue a bench warrant in such circumstances or whether a law enforcement officer must petition the circuit court judge to have the defendant committed for violating any such conditions.

You also asked whether a circuit court judge is authorized to amend the amount set by a municipal court judge for the release of a defendant on bond where no motion to amend the bond is made before the municipal court judge who set the bond or where no notice is given to the municipal court judge that an appeal will be made to the circuit court. I assume that you are referring to a case within the trial jurisdiction of the General Sessions Court.

The acknowledgement on the form no. 2 bail bond referenced above is consistent with the provisions of Section 17-15-40 of

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the 1976 Code of Laws. However, the statute is silent as to which court should issue any warrant. Also, I am unaware of any other statute or court rule which specifically comments on your question.

Circuit Court Rule 104 (9) provides for preliminary hearings for cases beyond the trial jurisdiction of a magistrate. A request for such must be made within ten days after notice of the opportunity for a hearing. The hearing is to be held within ten days of the request. Upon a finding of probable cause at a hearing, a defendant is bound over to the Court of General Sessions.

Referencing such rule, it appears that prior to a case being transferred to the General Sessions Court, a municipal judge would be authorized to issue a warrant for the arrest of a defendant who violated a condition of his bond. This conclusion is consistent with a prior opinion of this Office dated April 10, 1980 which concluded that a judge of a lower court could properly consider a motion to amend a bond if such motion was made prior to a defendant's preliminary hearing or prior to the expiration of the period in which a request for a preliminary hearing may be made. 1/ See also: Section 38-63-50 of the 1976 Code of Laws.

As to your second question concerning whether a circuit court judge could amend a bond where no motion is made before the judge originally setting the amount or where no notice of appeal is given, the conclusion just referenced should be noted as to the period of time concerning the preliminary hearing in which a municipal court judge can act in amending such a bond. 2/ However, it appears that a circuit court judge would be authorized to amend such a bond at any time.

Article V, Section 11 of the State Constitution states:

(t)he Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts....

1/ The 1980 opinion preceded the date of adoption of Circuit Court Rule 104 (9) noted above in 1982. However, the conclusion noted appears to remain correct.

2/ Section 17-15-50 of the 1976 Code of Laws provides that "(t)he court may, at any time after notice and hearing, amend the order to impose additional or different conditions of release."

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Such provision was cited by the State Supreme Court in State v. Keenan, 296 S.E.2d 676 (1982) in concluding that

... where the Legislature fails to grant the magistrates' courts 'exclusive jurisdiction' over designated 'cases', Article V, Section 7 ... (now Section 11) ... requires by clear implication that the Court of General Sessions retain its original concurrent jurisdiction over the matter. 3/

Admittedly, it has been stated:

... in the absence of compelling circumstances to do otherwise, any application to change bail should be made to the same judge who fixed it originally.

8 Am.Jur.2d, Bail and Recognizance, Section 85 p. 648. However, consistent with Keenan and Article V, Section 11, it appears that a circuit court judge would be authorized to amend the amount of bond set by a municipal court judge even where no notice is given to the municipal court judge who set the bond or where no notice is given to such judge that an appeal to the circuit court will be made.

If there are any questions, please advise.

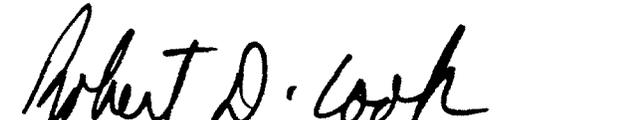
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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3/ An example of a legislative grant of exclusive jurisdiction to the magistrates' courts is Section 22-3-540 of the 1976 Code which references cases where the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days.