

1977 S.C. Op. Atty. Gen. 226 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-299, 1977 WL 24639

Office of the Attorney General

State of South Carolina

Opinion No. 77-299

September 22, 1977

*1 TO: Robert H. Orr, Jr.
Sheriff
Chester County

QUESTIONS PRESENTED:

(I) Can the Clerk of Court admit to bail persons charged with felonies?

(II) When an arrest warrant is issued in one county but served in another county, does the magistrate in the county where the subject was arrested have to set his bail?

(III) Is the Clerk of Court required to use the same bond forms that the magistrates use in accordance with Section 17-15-40 of the 1976 Code of Laws of South Carolina?

AUTHORITIES:

Sections 17-15-10, et seq., of the 1976 Code of Laws of South Carolina;

Section 17-15-40 of the 1976 Code of Laws of South Carolina;

[State v. Rabens](#), 79 S.C. 542, 60 S.E. 442 (1908).

DISCUSSION:

You have asked three questions of this Office regarding procedures in bond situations. Those questions will be treated hereafter in the order posed.

I.

Section 17-15-110, of the 1976 Code of Laws of South Carolina governs the authority of Clerks of Court to set bail and discharge prisoners and specifically limits by its terms the power of the Clerks to admit to bail only those persons 'charged with offenses less than a felony.'

CONCLUSION:

Therefore, it is the conclusion of this Office that Clerks of Court cannot admit to bail persons charged with felonies.

II.

In South Carolina an endorsing magistrate in another county may admit the accused to bail, [State v. Rabens, 79 S.C. 542, 60 S.E. 442 \(1908\)](#), since the endorsing magistrate would be the one with jurisdiction over the person. However, in the event the endorsing magistrate declines and the accused is transferred back to the county where the warrant was originally issued, it would be incumbent then for the magistrate who initially issued the warrant to consider bail.

CONCLUSION:

Therefore, it is the opinion of this Office that when a warrant has been issued in one county and sent to another to be served, the magistrate in the county where the subject has been arrested may set bail. However, should the endorsing magistrate decline, the accused should be presented to the issuing magistrate who would then consider bail.

III.

The manifest purpose of Section 17–15–10, et seq., of the 1976 Code of Laws of South Carolina is to provide a uniform manner in the State in which to admit persons to bail. Section 17–15–40 of the 1976 Code of Laws of South Carolina provides that the forms employed in releasing persons on bail and recognizance be approved by the Attorney General.

CONCLUSION:

Therefore, it is the opinion of this Office that the form approved by the Attorney General pursuant to Section 17–15–40, supra, should be used by both magistrates and Clerks of Court when they are performing the function of admitting persons to bail.

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