



ALAN WILSON
ATTORNEY GENERAL

April 29, 2022

John M. Rebolj, Chief of Police
Pelion Police Department
PO Box 7
Pelion, SC 29123

Dear Chief Rebolj:

We received your request seeking an opinion the legality of booking at a local police department without a magistrate involved for certain charges. This opinion sets out our Office's understanding of your question and our response.

Issue (as quoted from your letter):

If an officer were to make an on view custodial arrest for a magistrate level charge on a uniformed traffic ticket would it be permissible for that officer to transport the arrestee a short distance to the local police department? At the local police department the arrestee would be fingerprinted, photographed, and released on a summons.

The intention of this is to avoid overcrowding the jail for misdemeanor charges that will be released on their own recognizance by a magistrate. The procedure would be less an inconvenience to the arrestee who would not have to overnight at the jail and reduce out of service time for police officers who would not have to wait on booking at the jail. The procedure would capture arrest records for offenses with subsequent enhancements such as property crimes, driving under suspensions, and the likes.

With the above scenario in mind [the] question is:

Is it legal to effect a custodial arrest, then transport an arrestee, either voluntarily or otherwise, a short distance from the incident location to the local police department to conduct the usual booking procedures, then release the arrestee on their own recognizance without a magistrate?

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Law/Analysis:

Your request involves two basic issues: booking procedures and the release of an arrestee on their own recognizance.

First, on the issue of booking procedures, our Office has observed previously that “[i]n South Carolina, the gathering of information upon the charging and arresting of a person for a criminal offense is a function of and is governed by statute.” *Op. S.C. Att’y Gen.*, 2001 WL 265258 (February 22, 2001). Section 23-3-120 provides, in relevant part:

(A) All law enforcement agencies and court officials must report all criminal data and related information within their respective jurisdictions to the State Law Enforcement Division's Central Record Repository at such times and in such form as the State Law Enforcement Division requires. . . .

(B) A person subjected to a lawful custodial arrest for a state offense must be fingerprinted at the time the person is booked and processed into a jail or detention facility or other location when the taking of fingerprints is required. Fingerprints taken by a law enforcement agency or detention facility pursuant to this section must be submitted to the State Law Enforcement Division's Central Record Repository within three days, excluding weekends and holidays, for the purposes of identifying record subjects and establishing criminal history record information.

S.C. Code Ann. § 23-3-120(A)&(B) (Supp. 2020). Furthermore, section 23-3-130 establishes that SLED has regulatory authority over booking procedures:

The State Law Enforcement Division is authorized to determine the specific information to be supplied by the law-enforcement agencies and court officials pursuant to § 23-3-120, and the methods by which such information shall be compiled, evaluated and disseminated. The State Law Enforcement Division is further authorized to promulgate rules and regulations to carry out the provisions of this article.

S.C. Code Ann. § 23-3-130 (2007). Pursuant to this authorization, SLED has promulgated regulations related to “Uniform Crime Reporting” and the arrest and booking process for persons charged with criminal offenses. S.C. Code Ann. Regs. § 73-30 (2012). Consistent with our prior opinion, we encourage you to contact SLED with any specific questions in this area.

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Second, on the issue of the release of an arrestee on their own recognizance, the longstanding position of this Office has been that generally, “the setting of bond is a judicial function and consequently an individual must be carried before a judicial officer prior to being released on bond.” *Op. S.C. Att’y Gen.*, 2007 WL 4284630 (November 16, 2007) (quoting *Op. S.C. Att’y Gen.*, 1997 WL 811894 (November 7, 1997)). We quote at length here from a 1997 opinion of this Office, which in turn quotes and discusses other opinions, and the same analysis controls here:

Pursuant to Section 17-15-10, the determination of bail for an individual charged with a noncapital offense which is triable in magistrate's or circuit court is to be made “. . . at . . . (the accused's) . . . appearance before any such courts. . . .” [A prior opinion of this Office] noted that in evaluating what conditions of bail are to be imposed, the court may take into consideration several criteria as set forth in Section 17-15-30.

An opinion of this Office dated April 26, 1979 responded to the question as to whether a law enforcement officer is authorized to set a bond after an individual has been incarcerated or must the person be carried before a judicial officer for the setting of bond. The opinion again indicated that Sections 17-15-10 *et seq.* of the Code mandate the necessity of a hearing before a judicial officer whereby a determination may be made as to the release of an individual on bond. The opinion concluded in stating that the setting of bond is a judicial function and consequently an individual must be carried before a judicial officer prior to being released on bond.

Op. S.C. Att’y Gen., 1997 WL 811894 (November 7, 1997).

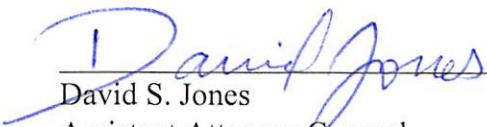
Conclusion:

In conclusion, “the gathering of information upon the charging and arresting of a person for a criminal offense is a function of and is governed by statute” in South Carolina, and we encourage you to contact SLED with any specific questions in this area. *Op. S.C. Att’y Gen.*, 2001 WL 265258 (February 22, 2001) (quoting, *inter alia*, S.C. Code Ann. § 23-3-120 (Supp. 2020)).

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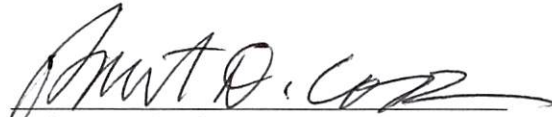
Consistent with several prior opinions of this Office, we affirm again that generally, “the setting of bond is a judicial function and consequently an individual must be carried before a judicial officer prior to being released on bond.” *Op. S.C. Att’y Gen.*, 2007 WL 4284630 (November 16, 2007) (quoting *Op. S.C. Att’y Gen.*, 1997 WL 811894 (November 7, 1997)). Although it may be the habitual practice for a magistrate to set a personal recognizance bond for certain offenses, it nevertheless remains the role of a judicial officer to set it, absent some specific statutory authority allowing for an exception. *Id.*

Sincerely,



David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General