



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

January 29, 2004

The Honorable Ralph E. Putnam  
Senior Administrative Judge  
City of Greenville, Municipal Court  
P. O. Box 488  
Greenville, South Carolina 29602

Dear Judge Putnam:

In a letter to this office you raised several questions regarding bail bondsmen going off a bond. S.C. Code Ann. Section 38-53-50 (2002) states as follows:

(A) A surety desiring to be relieved on a bond for "good cause" or the nonpayment of fees shall file with the court a motion to be relieved on the bond. A copy of the motion must be served upon the defendant, his attorney, and the solicitor's office. The court shall then schedule a hearing to determine if the surety should be relieved on the bond and advise all parties of the hearing date.

(B) If the circumstances warrant immediate incarceration of the defendant to prevent imminent violation of any one of the specific terms of the bail bond, or if the defendant has violated any one of the specific terms of the bond, the surety may take the defendant to the appropriate detention facility for holding until the court orders that the surety be relieved. The surety must immediately file with the detention facility and the court an affidavit stating the facts to support the surrender of the defendant for good cause or the nonpayment of fees. When the affidavit is filed with the court, the surety must also file a motion to be relieved on the bond pursuant to subsection (A). A surety who surrenders a defendant and files an affidavit which does not show good cause or the nonpayment of fees is subject to penalties imposed for perjury as provided for in Article 1, Chapter 9 of Title 16.

(C) After the surety has been relieved by order of the court, a new undertaking must be filed with the appropriate court in order to secure the re-release of the defendant. The undertaking must contain the same conditions included in the original bond unless the conditions have been changed by the court.

The Honorable Ralph E. Putnam

Page 2

January 29, 2004

In your first question you asked if a bail bondsman files the required paper work to be relieved on a bond and submits such to the detention facility, is a hearing required. As set forth above, a surety desiring to be relieved on a bond must file with the court a motion to be relieved on the bond. The court thereafter schedules a hearing to determine if the surety should be relieved on the bond. However, as further stated by Section 38-53-50(B), "(i)f the circumstances warrant immediate incarceration" as set forth by such provision, the surety may take the defendant to the appropriate detention facility for holding until the court orders that the surety may be relieved.

You next asked who can hold the hearing referenced by Section 38-53-50. As set forth in subsection (A), "the court shall then schedule a hearing..." Pursuant to Section 38-53-10(5), the term "court" "...unless otherwise specified, means circuit, magistrate's, or municipal court." In its decision in State v. Brakefield, 302 S.C. 317, 318, 396 S.E.2d 103, 104 (1990), the supreme court construed an earlier version of Section 38-53-50 in indicating that the procedure "allows surrender to the court which issued the bond." An opinion of this office dated October 27, 1993 also dealt with the earlier version of Section 38-53-50 in dealing with the question as to which court has jurisdiction with respect to the surrender of a defendant in a bail bond situation. That opinion referenced Rule 3 of the South Carolina Rules of Criminal Procedure which provides that magistrates and municipal judges

...shall, in all cases within the jurisdiction of the Court of General Sessions, forward to the Clerk of the Court of General Sessions all documents pertaining to the case...within fifteen (15) days from the date of arrest in the case of an arrest warrant and date of issuance in the case of other documents.

That opinion stated that

I have been advised by the Office of Court Administration that pursuant to such Rule, Sections 38-53-10 and 38-53-50 should be interpreted whereby a magistrate or municipal judge would not be considered as having authority regarding a particular defendant after the documents pertaining to the case are transmitted to the Clerk of Court's Office.

Consistent with that opinion, and absent any further directive from the Court, it appears that until documents related to a case within the jurisdiction of the court of general sessions are transmitted to the clerk of the court of general sessions pursuant to Rule 3, a magistrate or municipal judge would be authorized to schedule a hearing to determine if a surety should be relieved on a bond, especially if that court originally set the bond. After the papers are transmitted, such matter would be determined by the court of general sessions.

You next asked whether a defendant has the right to a bond even if his bondsman wants to be relieved. Section 38-53-50 provides that "(a)fter the surety has been relieved by order of the

The Honorable Ralph E. Putnam  
Page 3  
January 29, 2004

court, a new undertaking must be filed with the appropriate court in order to secure the re-release of the defendant." Therefore, a defendant may be released again on bond pursuant to such provision.

If there are any questions regarding the above, please advise.

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General