January 9, 2008

Jeffrey B. Moore, Executive Director
South Carolina Sheriffs' Association
112 Westpark Boulevard
Columbia, South Carolina 29210-3856

Dear Jeff:

In a letter to this office you indicated that a bail bondsman from outside South Carolina attempted to arrest an individual in South Carolina on a warrant from another state revoking the bond from that state. The arrest was interrupted by a South Carolina deputy sheriff who stopped the attempted arrest. The bondsman insisted that he had a valid warrant revoking the individual's bond and the authority to effect the arrest anywhere within the United States. You indicated that the deputy refused to allow the bondsman to take the individual into custody. You have questioned whether the bondsman had the stated authority or was the deputy correct in intervening. You also questioned whether had the bondsman successfully effected the "arrest" and presented the individual now in custody of the bondsman to the county jail until he could be transported to the originating state, must the jail accept the individual for safekeeping.

S.C. Code Ann. §§ 38-53-50 et seq. provide the statutory procedure for a surety to be relieved on a bond for "good cause" or the nonpayment of fees by surrendering the defendant. However, according to my reading of these statutes, such appear to be related solely to the surrender of a defendant released on bond in this State. See: S.C. Code Ann. § 38-53-50(A) (a surety who wants to be relieved on bond "shall file with the court a motion to be relieved" with a copy to the solicitor's office. The court then schedules a hearing to determine if the surety should be relieved. Such procedures would appear to be inapplicable to an out-of-state defendant).

A December 20, 1977 opinion of this office 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:

> When 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.

The opinion noted that South Carolina cases acknowledged the right of a bail bondsman to surrender the principal and be relieved of his obligation under the bail bond. See, e.g., Wilson v. McLeod, 274 S.C. 525, 265 S.E.2d 677 (1980); Breeze v. Elmore, 4 Rich. 436 (1851). Another opinion of this office dated January 14, 1982 commented that "...it appears that the right of a surety to surrender his principal is absolute." However, as pointed out above, statutes have now been enacted in this State which specifically provide for the surrender by a bondsman of a South Carolina defendant released on bond. See: State v. Brakefield, 302 S.C. 317, 318, 396 S.E.2d 103, 104 (1990) (commenting that Section 38-53-50, which has since been amended in certain regards, authorizes the procedure established by the General Assembly which "extends the common law to allow surrender to the court which issued the bond.").

In State v. Everett, 530 So.2d 615 at 621 (Ct.App.La.3rd Cir. 1988), the court cited Taylor, supra, along with the subsequent United States Supreme Court decision in Carlson v. Landon, 342 U.S. 524 (1952), as acknowledging "...the authority of bail bondsmen to effectuate warrantless arrests and to transport fugitives across state lines." Citing Taylor, supra, the court in Maynard v. Kear, 474 F.Supp. 794 at 804 (N.D. Ohio, E.Div. 1979) stated that "[i]t is well established that a bondsman may pursue his principal across state lines and recapture the principal pursuant to the common law right of recapture, by which no extradition is required."

It has been stated at 8A Am.Jur.2d Bail and Recognizance, Section 80 that

> [t]he sureties on a bail bond are generally entitled to take the principal into custody for the purpose of surrendering him or her in exoneration of their liability. In this regard, generally, the surety on a bail bond may, at his discretion, apprehend and surrender the defendant, and it has been said that the surrender of the defendant may be either with or without cause.

A footnote to such statement states that

> [t]he bonds officer's authority to arrest and surrender the principal derives from three overlapping sources: (1) the common-law principles enunciated by the Supreme

> Court in Taylor v. Tainter...; (2) statutory authorization; and (3) the contract between the surety and the principal....

However, that same footnote, citing the decision in Green v. State, 829 S.W.2d 222 (Tex. Crim. App. 1992) cautioned that "...Taylor v. Tainter is not the law in Texas, and that statutory guidelines have replaced the common law in Texas and define the law as it applies to sureties who seek to apprehend principals." I would note that I am unaware of any South Carolina authority which specifically addresses the surrender of a defendant released on bail in another state.

> As to how the surrender is to be made, 8 C.J.S. Bail, Section 207 commented that
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> [a]t any time before forfeiture is undertaken, a surety may surrender the defendant for detention to an officer to whose custody the defendant was committed at the time of giving bail, and, upon proof of surrender, the court must order exoneration of the surety. Where an accused person who is admitted to bail is considered as being transferred to the friendly custody of his or her sureties, they have the right to terminate at any time the responsibility assumed by them by surrendering him or her, in a legal manner, to the proper court or officer. Thus, at any time, before forfeiture is undertaken, a surety may surrender the defendant for detention to an officer to whose custody the defendant was committed at the time of giving bail, and, upon proof of surrender, the court must order exoneration of the surety. A surety's right to arrest a defendant in order to guarantee the defendant's appearance in court is a contractual right under the bond. (emphasis added).

See also: 8 C.J.S. Bail, Section139(b) ("[s]urrender of accused by bail should generally be made to the sheriff of the county in which the principal is being prosecuted....).

> At 8A Am. Jur.2d Bail and Recognizance, Section 85 it is stated that
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> [a]t common law, a bail bonds officer, or surety's right to seize a bailed individual, or principal, for surrender at any time without resort to the legal system, was held to follow the principal over state lines, and a surety could arrest his or her principal in any state and surrender him or her to the state where the principal was charged without new process...However, the common law right of a bonds officer to seize a principal within one state for surrender in another state has been, in some states, abrogated by the Uniform Criminal Extradition Act, which contains procedural requirements with regard to arrests prior to the requisition of a fugitive from justice. (emphasis added).

According to my understanding, South Carolina has not adopted or become a party to the Uniform Criminal Extradition Act. See: Reed v. State, 947 P.2d 86 (N.Mex. 1997); Heitman v. State, 627

N.E.2d 1307 (Ind.App. 1994) (noting that 48 states have adopted the referenced Act but that South Carolina and Mississippi have not).

Consistent with the above, in the opinion of this office, 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. However, I am unaware of any authority that states definitively that a county jail in South Carolina must accept that out-of-state defendant. As noted above at 8 Am.Jur.2d Bail and Recognizance, Section 85, at common law, the surety could arrest the defendant and "surrender him or her to the state where the principal was charged". The South Carolina statutes referenced previously, Sections 38-53-50 et seq., provide for the statutory procedure for a surety to be relieved on a bond by surrendering the defendant. However, as stated above, according to my reading of these statutes, such appear to be related solely to the surrender of a defendant released on bond in South Carolina. Therefore, it appears that the bondsman must return the defendant to the other state.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Assistant Deputy Attorney General