

March 28, 2007

James A. Preacher, Jr., Chief of Police
Norway Police Department
P. O. Box 127
Norway, South Carolina 29113

Dear Chief Preacher:

In a letter to this office you raised several questions regarding bond hearings. You essentially asked how soon must a bond hearing be held after a defendant has been arrested.

S.C. Code Ann. § 22-5-510(B) states that

[a] person charged with a bailable offense must have a bond hearing within twenty-four hours of his arrest and must be released within a reasonable time, not to exceed four hours, after the bond is delivered to the incarcerating facility.

Chief Justice Toal in an order dated November 28, 2000 also reiterated that “[a]ll persons incarcerated, booked, and charged with a bailable offense must have a bond hearing within twenty-four hours of their arrest as required by S.C. Code Ann. § 22-5-510.” Therefore, a defendant must have a bond hearing within twenty-four hours of his arrest. As to your statement that the 24 hour rule “is for magistrates not police departments”, again, state statute and the Order of the Chief Justice mandates a bond hearing within twenty-four hours of arrest. Such time limitation must be observed by magistrates and law enforcement.

You also questioned “how long can a police department hold a person legally for an investigation before a charge is made, if it is an on going investigation and there is probable cause to believe a crime has been committed by the subject.?” Since you indicated that there is probable cause to believe that a crime has been committed, it is my assumption that the individual referred to by you has been arrested.

A prior opinion of this office dated July 10, 1995 referenced generally that

...the Fourth Amendment requires a “prompt” determination of probable cause by a judicial official as a prerequisite to any extended pretrial detention following a warrantless arrest.

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That opinion was referenced in another opinion of this office dated October 12, 1998, a copy of which is enclosed, which discusses generally the holding of a defendant after a warrantless arrest. Reference was also made in the opinion to S.C. Code Ann. § 22-5-200 which requires that “[w]hen an arrest is made by a deputy sheriff without a warrant...the person so arrested should be forthwith carried before a magistrate and a warrant of arrest procured and disposed of as the magistrate should direct.” Also referred to in the opinion was the decision by the United States Supreme Court in Riverside v. McLaughlin, 500 U.S. 44 (1991) which generally provides a forty-eight hour rule within which an arrested defendant must be formally charged. The opinion concluded that

[p]robable cause determinations for arrest without warrant are still controlled by 22-5-200's mandate that a person arrested without a warrant “...should be forthwith carried before a magistrate and a warrant of arrest procured and disposed of as the magistrate should direct.” We have consistently read the “forthwith” requirement as being within a reasonable period of time. The Riverside case establishes that the 4th Amendment sets 48 hours as the general constitutional parameter to be followed for a probable cause determination.

Additionally, a prior opinion of this office dated January 9, 1992 quoted the South Carolina Bench Book for Magistrates and Municipal Court Judges which stated

[i]f an arrest is made without a warrant, the arresting officer should take the person to a magistrate or municipal court judge without reasonable delay so that the judge may investigate the circumstances of the arrest and if proper, issue an arrest warrant. Therefore, as to situations where an arrest is made without a warrant, there should not be any considerable lag between the time of arrest and the time a warrant is issued.

I would refer you to the enclosed opinion for a fuller discussion of this issue.

With kind regards, I am,

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General