

November 16, 2007

The Honorable Isaac McDuffie Stone, III
Solicitor, Fourteenth Judicial Circuit
Post Office box 620
Walterboro, South Carolina 29488

Dear Solicitor Stone:

In a letter to this office you questioned the propriety of law enforcement officers not associated with the State Department of Public Safety accepting a cash bond in lieu of immediately taking a person charged with a traffic offense before a judicial officer.

S.C. Code Ann. § 23-6-150 states that

[w]hen any person is apprehended by a officer upon a charge of violating any laws of the State relative to highway traffic, motor vehicles or commercial motor carriers such person shall immediately be served with an official summons. The person charged may deposit bail with the arresting officer in lieu of being immediately brought before the proper magistrate, recorder, or other judicial officer to enter into a formal recognizance or make direct the deposit of a proper sum of money in lieu of a recognizance or incarceration. The apprehending officer may accept a sum of money as bail, not less than the minimum nor more than the maximum fine, but in no case to exceed two hundred dollars, to be in due course turned over to the judicial officer as money for bail. The bail deposited shall be in lieu of entering into a recognizance for his appearance for trial as set in the aforesaid summons or being incarcerated by the arresting officer and held for further action by the appropriate judicial officer. A receipt for the sum of money so deposited shall be given to such person by the arresting officer. The summons duly served as herein provided shall give the judicial officer jurisdiction to dispose of the matter. Upon receipt of the fixed sum of money the officer may release the person so charged as above provided for his further appearance before the proper judicial officer as provided for and required by the summons.

Such provision is included in Article 3 of Chapter 6 entitled "Highway Patrol Division", S.C. Code Ann. §§ 23-6-100 et seq. Chapter 6 is entitled "Department of Public Safety". A review of provisions other than Section 23-6-150 included in Article 3 indicates that all relate to the South Carolina Highway Patrol Division and the South Carolina State Police Division within the

Department of Public Safety. Two provisions immediately prior to Section 23-6-150, S.C. Code Ann. §§ 23-6-140 and 23-6-145, relate specifically to the powers, duties and responsibilities of the State Highway Patrol and the State Police. Section 23-6-145 states that “[a] commissioned officer or a uniformed officer of the department may, upon reasonable belief that any vehicle is being operated in violation of any provision of statutory law, require the driver thereof to stop and exhibit the registration card issued for the vehicle, the individual’s driver’s license, and submit to an inspection of such vehicle and license.” In the opinion of this office, Section 23-6-150 would not be applicable to law enforcement officers other than officers with the State Highway Patrol Division and the State Police Division.

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. Atty. Gen. dated November 7, 1997. Prior opinions of this office have concluded that unless specific authority is granted by statute to collect a cash bond, such as pursuant to Section 23-6-150 for officers of the South Carolina Highway Patrol Division and the South Carolina State Police Division within the Department of Public Safety, there is no authority generally for other law enforcement officers to collect roadside bonds. See: Ops. Atty. Gen. dated November 7, 1997; January 21, 1991; November 13, 1990. Other prior opinions of this office have recognized that pursuant to former S.C. Code Ann. § 23-5-50, a statute repealed by Act No. 181 of 1993¹, a state highway trooper was entitled to set and accept a cash bail. In State v. Adkison, 264 S.C. 180, 185, 213 S.E.2d 591 (1975), the Supreme Court recognized that pursuant to such provision, “...a highway patrolman may, in lieu of arresting an accused person, serve a summons and accept a sum of money as bail.”

The authority of a state trooper to accept a cash bail is similar to the statutory authority granted to specific other officers. For instance, pursuant to S.C. Code Ann. § 50-3-410(B),

[a] person apprehended by an enforcement officer or deputy enforcement officer employed by the Department of Natural Resources, or any officer deputized by the department pursuant to Section 27-16-70(C)(2) for any of the offenses...(set forth in subsection (A))..., upon being served with an official summons, may offer to deposit cash money as bail with the apprehending enforcement officer. In the discretion of the apprehending enforcement officer, he may accept cash money as bail in an amount not less than the minimum nor more than the maximum fine, plus court costs, in lieu of a personal appearance or incarceration....

S.C. Code Ann. § 16-11-710 states that

[w]hen any person is charged with a violation of 16-11-700 or any county ordinance relating to litter control, any officer authorized to enforce such law or ordinance may accept a cash bond in lieu of requiring an immediate court appearance. Such bond shall not exceed the maximum fine provided for a conviction of the offense charged

¹Sections 23-6-100 et seq. were originally enacted by Act No. 181 of 1993.

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and may be forfeited to the court by the enforcement officer if the person charged fails to appear in court.

One additional factor that should be considered is the Nonresident Traffic Violators Compact, S.C. Code Ann. §§ 56-25-10 et seq. Pursuant to Section 56-25-30

[a]ny law enforcement officer who issues to a person a uniform traffic citation may, in addition to other action authorized by law and subject to the exceptions noted in this section, allow the person to proceed without first either having to post bond or appear before a magistrate, recorder or other judicial officer if the person accepts the citation. Such acceptance shall constitute the person's recognizance to comply with the terms of the citation.

When issuing a citation for a traffic violation to a nonresident who is licensed by a compact jurisdiction, if the law enforcement officer receives the person's recognizance as above-described, the officer shall not, subject to the exceptions noted below, require the person to post bond but shall allow the person to proceed.

Exceptions to violations for which an individual is not entitled to release on personal recognizance are set forth in Section 56-25-40. Therefore, in addition to the authority of an officer with the South Carolina Highway Patrol Division and the South Carolina State Police Division within the Department of Public Safety to accept a cash bond pursuant to Section 23-6-150 is the authority to allow a driver to proceed without having to post bond or appear before a magistrate pursuant to the Nonresident Traffic Violators Compact.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General