

5226 Highway

# The State of South Carolina



## Office of the Attorney General

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October 27, 1993

Joe W. Mitchell, Sheriff  
York County Detention Center  
529 South Cherry Road  
Rock Hill, South Carolina 29730

Dear Sheriff Mitchell:

In a letter to this Office you referenced S.C. Code Section 38-53-50 which provides for review by the "appropriate judge" in circumstances where a surety desires to surrender a defendant. The term "appropriate judge" is defined by S.C. Code Section 38-53-10 (12) as "... a magistrate, municipal or circuit court judge who has jurisdiction over the defendant." You questioned at what time is a magistrate or municipal judge not considered to be the "appropriate judge" with jurisdiction over the defendant in a surrender situation.

Generally pursuant to Rule 3 of the South Carolina Rules of Criminal Procedure 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 ....

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. Again, such documents are to be forwarded within the specified fifteen day period. Of course, such is also dependent on any further orders of the Chief Administrative Judge of the Circuit.

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You also asked whether a detention facility must hold a defendant without bond until the surety can get the defendant before a judge or may the original bond amount be restored against the defendant and another surety be permitted to secure the defendant's release. Section 38-53-50 is silent as to whether the original bond amount may stand and another surety be allowed to secure a defendant's release. Therefore, consistent with S.C. Code Section 17-15-10 et seq., it appears that a further appearance before the court for a review and setting of bond would be necessary.

If there is anything, further, please advise.


Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR:bvc

REVIEWED AND APPROVED BY:

  
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