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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 5, 1995

The Honorable Jack I. Guedalia
Charleston County Magistrate
P. O. Box 32412
Charleston, South Carolina 29417

Re: Informal Opinion

Dear Judge Guedalia:

You seek an opinion concerning the jurisdiction of magistrates in criminal matters beyond their jurisdiction to try. You reference S.C. Code Ann. Section 17-15-40 which, as you state, "cites what will happen if a violation of condition of bond occurs -- to wit: a warrant for the person's arrest will be issued." Specifically, your question is:

> [w]hen does such a requirement no longer fall within the responsibility of the bonding magistrate who set the condition and is probably the most knowledgeable to determine if such warrant should be issued?

It is my opinion that the bonding magistrate retains jurisdiction to alter or amend its order setting bond and to enforce the conditions thereof up until the time of indictment.

In an Administrative Order for the Court of General Sessions, Ninth Judicial Circuit, dated May 9, 1995, the Honorable Don S. Rushing, Chief Judge for Administrative Purposes, stated as follows:

> [i]n cases where an indictment has not been obtained, motions to reconsider a bond set by a Magistrate should be made to that Magistrate for reconsideration. Therefore, unless an appeal is filed to this Court from the Magistrate's Court concerning bond, such cases will not be set before the Circuit Court Judiciary.

> In cases where an indictment has been obtained, in which bond had been set by a Magistrate, a motion may be made to the Circuit Court to consider a modification to the bond, [hereinafter designated a "Motion to Consider Modification of Bond Set By a Magistrate"] which motion will be scheduled for a hearing.

The Order was also signed by the Honorable Markley Dennis, Jr., the Honorable A. Victor Rawl, the Honorable Daniel Martin, Sr., and the Honorable William L. Howard, Judges of the Ninth Judicial Circuit.

Based upon this Order, and the general authorities in this area, it is my opinion that where no appeal is involved, the bonding magistrate possesses the jurisdiction to alter or amend its order setting bond and enforce the conditions thereof with respect to a General Sessions case, up until the time of indictment.

S.C. Code Ann. Section 17-15-40 in pertinent part provides:

> [o]n releasing the person on any of the foregoing conditions, the court shall issue a brief order containing a statement of the conditions imposed, informing the person of the penalties for violation of the conditions of release and stating that a warrant for the person's arrest will be issued immediately upon any such violation.

Section 17-15-50 further provides that the "... court may, at any time after notice and hearing, amend the order to impose additional or different conditions of release."

Our Supreme Court has stated repeatedly that the Court of General Sessions, a court of general criminal jurisdiction, acquires jurisdiction upon indictment. Article V, Section 11 of the South Carolina Constitution provides that "[t]he Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts ...". Article I, Section 11 states in pertinent part that "[n]o person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed ..." The Court has held such provision to be jurisdictional. State v. McCoy, 98 S.C. 133, 82 S.E. 280 (1914); State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (1982); State v. Hann, 196 S.C. 211, 12 S.E.2d 720 (1940); State v. Allen, 266 S.C. 468, 224 S.E.2d 881 (1976) [indictment by grand jury means defendant is not entitled as a matter of law to preliminary hearing].

In State v. Beachum, 288 S.C. 325, 342 S.E.2d 597 (1986), the Court determined that a defective grand jury indictment discovered during trial of a criminal case deprived the Court of General Sessions of subject matter jurisdiction even where a second true bill, proper in its form, was issued during the trial. In Beachum, the defendant argued that the trial court possessed no subject matter jurisdiction to convict him for kidnapping "when there was no indictment for kidnapping at the time the jury was sworn." Referencing Article I, Section 11, the Supreme Court agreed:

> [p]resentment of grand jury is a condition precedent to the trial of a crime except in certain minor offenses .... Presentment during trial did not remedy the lack of subject matter jurisdiction which existed at the commencement of a trial. Appellant's kidnapping conviction and sentence are vacated.

238 S.C. at 325.

Furthermore, the common law recognized that "a court in which a criminal action is pending has a right to alter or amend its order setting bail, provided the charge is made for good and sufficient cause." 8 Am.Jur.2d. Bail and Recognizance, § 82.

The case of Doherty v. Patterson, 239 P. 1045 (Wyo. 1925) is particularly instructive regarding the retention of jurisdiction of a magistrate or justice of the peace to amend, modify or correct a bond originally set by him. There, a justice of the peace originally set bond at $500.00 for larceny and bound the defendant over for trial at the next term of district court. It was subsequently determined that the pertinent statute required that the accused should be held to answer in the present session of the district court, "forthwith". Thus, the justice of the peace revoked the bond and ordered the defendant arrested in order to give bond for his appearance at the ongoing session of criminal court. The Supreme Court concluded that the justice of the peace possessed the necessary jurisdiction to modify the bond until such time as the accused was indicted.

While the Court in Doherty construed the particular statutes which were applicable, the decision also strongly supported the inherent authority of a justice of the peace or magistrate to amend bond in a case beyond his jurisdiction to try until such time as the indictment is issued. Quoting from Carothers v. Scott and Watt, Tapp. (Ohio) 227, the Court recognized:

> [i]f a justice of the peace is satisfied, on examination of the evidence in a criminal prosecution, that there are probable grounds to believe the person charged is guilty, it is his duty

> to commit such person to prison, unless he gives good security in such sum as the justice may order, conditioned to appear at the next term of common pleas--he should ascertain the sufficiency of the security offered; should, if necessary, examine, on oath, the bail offered; but, with all ordinary precaution, a pauper may be imposed on him as a man of substance. What is he to do in such case? A man, charged with arson, robbery, or burglary, all bailable offenses, against whom the circumstances are strong and the evidence positive, has procured himself to be liberated, on bail who are not worth a cent. Is public justice to be thus fraudulently eluded? I should think not; but that, as soon as the magistrate discovers the imposition, he should cause the person charged, to be brought again before him, and told him to give sufficient security. The magistrate must, of necessity exercise this power. If the books were entirely silent, I should not entertain a doubt on the subject; but the authority which has been read, is direct and clear as to this point.

239 P. at 1047. The Court cited a number of other authorities in support of this position, dating all the way back to Hawkins, in his Pleas of the Crown, vol. 2, p. 139, c. 15, § 4 [justice of peace with power to admit to bail "may require the party to file better surety ...".] Thus, concluded the Court, "it is not only the right but the duty of an officer, who has taken an insufficient or illegal bond, to require one that is sufficient and legal." Supra at 1048. Until indictment, therefore, the bonding magistrate possessed the necessary jurisdiction to amend or modify the bond.

Accordingly, based upon the foregoing authorities, it is my opinion that, with respect to a case beyond the jurisdiction of the magistrate to try, the bonding magistrate retains jurisdiction to alter or amend its order setting bond or enforce the conditions thereof up until the time of indictment by the grand jury.[1]

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[1] State v. Keenan, 278 S.C. 361, 296 S.E.2d 676 (1982) is not inconsistent. Keenan held that the State Constitution, particularly Art. V, § 7, precluded the General Assembly from depriving the Court of General Sessions of its original jurisdiction over a "criminal case" without at the same time granting "exclusive jurisdiction" of the same case to the magistrate's court. There, the Legislature had forbidden General Sessions from exercising jurisdiction of cases beyond the jurisdiction of magistrates to try until a preliminary hearing was held, where demanded. The Court, however, did not comment upon or alter

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This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has[1] not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

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[1](...continued)
its longstanding view that the indictment by the grand jury is what vests jurisdiction in the Court of General Sessions. Indeed, Beachum, cited above was decided well after Keenan was handed down.