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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

December 5, 1997

The Honorable Harry H. Nelson
Summary Court Judge
Greenville County
414 Willow Springs Drive
Greenville, South Carolina 29607

Re: Informal Opinion

Dear Judge Nelson:

You state that you work at night as a summary court judge at the Greenville County Detention Center "and issue warrants, hold Bond Hearings and issue commitments for the county and three municipalities."

You further provide the following factual background:

[o]n two occasions recently, I have released three inmates who had been committed to the detention center by Judge Morgan. I did this after a request by them or a representative of theirs. I felt in the case of all three that they were neither a flight risk nor did they represent a danger to the community. In the first case two white males had been detained on a commitment for conspiracy to purchase crack cocaine for distribution. I was approached by the wife of one of them and feeling that they both had ties to the community and seeing no danger since no violence to the community was indicated either by the offense nor in their actions or demeanor, I was satisfied in my judgment enough to release them on their personal recognizance. In the second case a white female requested a PR bond. She had been committed

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for obtaining money by fraudulent intent. The amount of money was about \$15.00. Again feeling there were sufficient ties to the community and seeing no threat to the community I released her.

In neither case did I circumvent Judge Morgan's commitment. These people were already in jail and I was asked to review their situation.

It is my opinion that it is not only within my jurisdiction to take these actions, it is a part of the reason that my office is located at the detention center and that my hours are during the night.

Law / Analysis

Your question has been answered by a previous opinion of this Office. In Op. Atty. Gen., Op. No. 80-39 (April 10, 1980), we addressed the question of "whether a judge is authorized to change the bond that is set by another judge with the same jurisdiction, e.g., whether a magistrate could change the bond set by another magistrate?" We noted that we were "unaware of any authority in this State permitting such amending of a bond." We recognized that it is generally held that

"[i]n the absence of compelling circumstances to do otherwise, any application to change bail should be made to the same judge who fixed it originally." 8 Am.Jur.2d, Bail and Recognizance, Section 80, p. 829. Therefore, in the opinion of this Office, absent some "compelling circumstances," a judge is not authorized to amend the order setting bail originally imposed by another judge of the same jurisdictional level.

The 1980 opinion is referenced in the South Carolina Bench Book for Magistrates and Municipal Judges at p. III-34. There the Bench Book states that

[o]nce bail is set by a magistrate or municipal judge, absent "compelling circumstances," no other magistrate or municipal judge is authorized to amend the original order setting bail The judge who originally set the amount of bail, when presented with new information, might reconsider the bail

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which he had set earlier provided the case has not been transferred to general sessions court. It would be inappropriate for a magistrate or municipal judge to hear the facts and change the bond set by another magistrate or municipal judge, unless there are compelling circumstances which prevent the first judge from hearing the motion. (emphasis added).

This remains the opinion of this Office.

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 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

RDC/an