

The State of South Carolina



Office of the Attorney General

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November 27, 1991

W. J. "Rick" Johnson, Jr., Executive Director
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29210-4088

Dear Mr. Johnson:

In a letter to this Office you indicated that several jails have established fixed times for releasing defendants and, as a result, continue to hold defendants after a judge has set bail and ordered the defendant's release. You indicated that in your opinion such procedure is improper.

I am unaware of any authority for a jail to continue to hold a defendant after that defendant has met the terms of any bond set by a court and has been ordered released by the court. As referenced in the South Carolina Bench Book for Magistrates and Municipal Court Judges, as to a bail situation,

... (o)nce the release procedures have been made, the magistrate or municipal court judge should see that the defendant is promptly discharged from custody. This can be done by a discharge order to the jailer when he admits the defendant to bail.

p. III-47.

Such is consistent with an opinion of this Office dated April 8, 1980 which stated that in circumstances where

... a prisoner is served with lawful process and procures bond, he should then, upon proof of process ordering his release, be released ... (A)n individual

Mr. Johnson

Page 2

November 27, 1991

may not necessarily be immediately released if his condition should pose a threat to the safety of the public or himself, i.e., an intoxicated condition.

See also: Op. Atty. Gen. dated December 5, 1974.

Consistent with the above, a procedure of holding defendants ordered released on bond until a fixed time of release does not appear to be authorized absent limited circumstances such as where release would pose a threat to the safety of the public or the defendant due to the defendant's physical condition, such as where the defendant is intoxicated. In such a situation, clarification by the court authorizing any delay in releasing the defendant would be advisable. Of course, as to an individual in an intoxicated condition, an opinion of this Office dated May 2, 1979 referenced an earlier opinion, 1965 Op. Atty. Gen. No. 1838, which stated "an intoxicated person under arrest has no right to release on bond until he is sober." The 1979 opinion referenced that an intoxicated individual would presumably not be in a position to acknowledge the terms and conditions of a bond which is necessary prior to his release. Therefore it appears that delays due to physical condition of the defendant would be rare.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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