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August 29, 1990

George A. Markert, Assistant Director
South Carolina Court Administration
P. O. Box 50447
Columbia, South Carolina 29250

Dear George:

In a letter to this Office you referenced Act No. 549 of 1990 which authorizes a clerk of court to deposit bail bond monies in interest bearing accounts with the interest to be credited to the general fund of the county. You noted that pursuant to Section 38-53-270 of the Code, professional bail bondsmen are required to maintain deposits with the clerk of court in the form of passbook savings accounts or certificates of deposit "... equal to at least one-fourth the amount of all bonds or undertakings written in this State on which he is absolutely or conditionally liable as of the first day of the current month." Interest paid on deposits may be collected by the various bondsmen. You have asked whether clerks of court may assume that Act No. 549 deals with deposits of cash bonds or cash percentages in lieu of bonds while Section 38-53-270 deals with surety bonds and as a result, the two provisions are not in conflict.

Pursuant to Section 17-15-15 of the Code, the court may permit a defendant to deposit with a clerk of court an amount not to exceed ten per cent of a bond originally set in lieu of requiring the actual posting of bond. Upon fulfillment of the conditions of bond, such amount is to be returned to a defendant unless otherwise ordered. Also, pursuant to Section 17-15-190 of the Code, in lieu of entering into a bond, an individual may deposit a sum of money equal in amount to the bond. Such amount may be returned upon fulfillment of the purposes for which such amount was received. Section 22-5-530 of the Code provides that a defendant charged with a magistrate's court offense may deposit a sum of money with the magistrate in lieu of entering into a bond. Such amount may not exceed the maximum fine for the offense charged.

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Section 38-53-280 of the Code provides that the securities deposited with the clerk of court by a bondsman are to be held in trust for the benefit of the holder of the bail bonds. As referenced, the interest paid on the deposits may be collected by the bondsman. Also, all such securities are to be returned if the bondsman satisfies obligations on the bail bonds written by him. However, the securities may be sold or transferred to satisfy any liabilities of the bondsman. Section 38-53-290 of the Code requires the execution of a power of attorney authorizing the sale or transfer of such securities upon deposit of the securities with the clerk of court.

I am in agreement with your understanding that Act No. 549 deals with deposits of cash bonds or cash percentages in lieu of bonds while Sections 38-53-270 et seq. relate to surety bonds. Such latter statutes are quite specific in providing that any interest generated is to be returned to the bondsman. Also, Act No. 549 is quite specific in its reference to "bail bond money received" for offenses. Therefore the two situations appear to be distinguishable with the result that Act No. 549 should be construed to be applicable only to deposits of cash bonds or cash percentages in lieu of bond.

With best wishes, I am

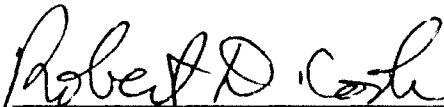
Very truly yours,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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