

The State of South Carolina



Office of the Attorney General

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January 21, 1991

The Honorable Edward H. Overcash, Jr.
Chief Magistrate, Spartanburg Magistrate Court
Spartanburg County Courthouse, Room 134
Spartanburg, South Carolina 29301

Dear Magistrate Overcash:

In a letter to this Office you raised the following questions:

1. Does the court, the trooper, or the Defendant determine the amount of cash bond a defendant may deposit with a trooper pursuant to § 23-5-50?
2. In light of § 56-25-40(b), does a trooper or any other law enforcement officer have any authority to set a bond or place any bond amount on a traffic ticket other than that amount established by the court before whom the case will be tried?
3. What are the possible legal consequences for a trooper or other law enforcement officer who either intentionally collects an amount of money as bail pursuant to § 23-5-50, or instructs a defendant that he may forfeit an amount of bail money as his fine, which is either less than the minimum amount required by law for the court to collect or which the law enforcement officer knows is less than that amount "required by the court" as stated in § 56-25-40(b)?

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Section 23-5-50 of the Code states:

When any person is apprehended by a patrolman upon a charge of violating any traffic or other law, the enforcement of which by a patrolman is authorized by law, the person so being charged, upon being served with the official summons issued by such arresting patrolman, in lieu of being immediately brought before the proper magistrate, recorder or other judicial officer to enter into a formal recognizance or make direct the deposit of a proper sum of money in lieu of a recognizance or incarceration, may deposit with the apprehending patrolman a sum of money as bail, not less than the minimum nor more than the maximum fine, but in no case to exceed two hundred dollars, to be in due course turned over to the judicial officer as money for bail, in lieu of entering into a recognizance for his appearance for trial as set in the aforesaid summons or being incarcerated by the arresting officer and held for further action by the appropriate judicial officer. A receipt for such sum so deposited shall be given to such person by such arresting officer. The summons duly served as herein provided shall give the judicial officer jurisdiction to dispose of the matter. Upon receipt of the fixed sum of money the patrolman may release the person so charged as above provided for his further appearance before the proper judicial officer as provided for and required by the summons.

Pursuant to Section 56-5-6220 of the Code, "notwithstanding any other provision of law, the entry of any plea of guilty, the forfeiture of any bail posted or the entry of plea of nolo contendere for a violation of the traffic laws ... shall have the same effect as a conviction after trial under the provisions of such traffic laws."

As referenced, pursuant to Section 23-5-50, an individual apprehended by a state trooper "may deposit with the apprehending patrolman a sum of money as bail ... to be in due course turned over to the judicial officer as money for bail...." It is generally stated

While ordinarily nonjudicial officers may not admit to or allow bail, there are cases where it is held that nonjudicial officers may admit offenders to bail where empowered to do so by statute.

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8 C.J.S. Bail, Section 50, p. 64. This Office in an opinion dated November 13, 1990 determined that "... except where specifically authorized, the setting or collecting of bail by law enforcement officers is not authorized." Similarly in an opinion dated April 26, 1979 it was stated that since the setting of bail is typically considered to be a judicial function, authority for a law enforcement officer to set bail must be granted by action of the General Assembly. In prior opinions this Office has indicated that pursuant to Section 23-5-50, State highway troopers are authorized to set and accept a cash bail. See: Opins. Atty. Gen. dated November 13, 1990, January 15, 1980, August 31, 1967. In State v. Adkison, 264 S.C. 180 at 185, 213 S.E.2d 591 (1975) the State Supreme Court referenced that pursuant to such provision "... a highway patrolman may, in lieu of arresting an accused person, serve a summons and accept a sum of money as bail." Opinions of this Office have noted that such authority to accept bail by a trooper is similar to the authority granted wildlife officers pursuant to Section 50-3-410 of the Code. Such provision states in part:

When a person is apprehended by a conservation officer ... the person charged, upon being served with an official summons, may deposit with the apprehending conservation officer money as bail, not less than the minimum nor more than the maximum fine, not to exceed two hundred dollars in lieu of a recognizance....

Other opinions have noted that pursuant to Section 16-11-710 of the Code, cash bonds may be accepted by an officer authorized to enforce litter statutes in lieu of requiring a court appearance by the offender. See: Opins. Atty. Gen. dated January 12, 1981 and April 26, 1979.

Consistent with the above opinions of this Office, it has been the longstanding practice that state troopers set and collect a roadside bond. See: S.C. Bench Book for Magistrates and Municipal Court Judges, pp. III 39-40. Generally such longstanding acceptance and practice should not be overruled without cogent reason. See: Emerson Electric Co. v. Wasson, 287 S.C. 394, 339 S.E.2d 118 (1986); Etiwan Fertilizer Co. v. S.C. Tax Comm., 217 S.C. 314, 60 S.E. 682 (1950). In Etiwan, it was stated

... where the construction of a statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time such construction is entitled to weight, and should not be overruled without cogent reasons.

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See also: Opins. Atty. Gen. dated June 8, 1989, October 7, 1983, April 9, 1981.

Therefore, it remains the opinion of this Office that a State trooper is authorized to set and collect a roadside bond. I do not construe Section 56-25-40(b), a provision of the Nonresident Traffic Violator Compact, as altering this conclusion. One of the primary purposes of the Compact is to allow an individual who is issued a uniform traffic citation to proceed without posting bond or appear before a judicial officer. I would note that Section 23-5-50 has been amended since Sections 56-25-10 et seq. were enacted so as to increase from one hundred to two hundred dollars the sum of money a State trooper may collect as bail. I am unaware of any attempts at such time to amend Section 23-5-50 in light of the provisions of Sections 56-25-10 et seq. It is well recognized that the lack of any amendment following the issuance of an opinion of the Attorney General strongly suggests that the conclusion set forth in such opinion was consistent with legislative intent. Scheff v. Township of Maple Shade, 374 A.2d 43 (N.J. 1977). Also, pursuant to a memorandum issued by Colonel Alford of the Highway Patrol, a copy of which I am enclosing, a new minimum bond schedule has been established. The new schedule increases the minimum bond to be received and hopefully will aid in regard to the problems incurred in the past regarding assessments.

With kind regards, I am

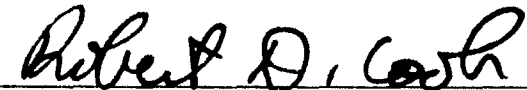
Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/an
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions