

# The State of South Carolina



## Office of the Attorney General

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November 30, 1990

The Honorable John W. Tucker, Jr.  
Member, House of Representatives  
Route 1, Highway 81 North  
Anderson, South Carolina 29621

Dear Representative Tucker:

In a telephone conversation you asked whether a magistrate is authorized to estreat a bond.

Enclosed is a copy of Section 17-15-170 of the Code which provides for the procedure in case of forfeiture of a recognizance. You will notice that in 1988 the General Assembly amended such provision to authorize a magistrate to confirm judgments of \$218.00 or less. Prior to the amendment this Office had indicated that appearance bonds may only be estreated in the court of general sessions. See: Opinions dated January 9, 1963, September 3, 1974 and March 1, 1965 (enclosed).

Instead of entering into a recognizance, pursuant to Section 22-5-530 of the Code

All persons charged and to be tried before any magistrate for any violation of law shall be entitled to deposit with the magistrate, in lieu of entering into recognizance, a sum of money not to exceed the maximum fine in the case for which such person is to be tried.

The practice of forfeiting bond in magistrate's court instead of appearing for trial is generally recognized in this State. As to traffic offenses, pursuant to Section 56-5-2960 of the Code,

(t)he entry of any plea of guilty, the forfeiture of any bail posted or the entry of plea of nolo contendere for violation of any provision of ... (Chapter 5 of Title 56) ... or for the violation of any other law or ordinance of this State that prohibits any person from operating a motor vehicle which under the influence of intoxicating,

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liquor, drugs or narcotics shall have the same effect as a conviction after trial under such provisions of such chapters, laws or ordinances.

Additionally, the courts have recognized treating a forfeiture as a conviction in a driving under the influence case. See: State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981). However, as stated in an opinion of this Office dated December 21, 1984, "it is clear that permitting a defendant to forfeit any bail posted instead of proceeding to trial is a matter within the discretion of the court."

The referenced opinion further noted that instead of concluding a case by permitting a defendant to forfeit any bail posted, an accused may be tried in absentia if he has been properly notified as to the time and place of his trial and he does not appear at the proper time. State v. Atkison, 264 S.C. 180, 213 S.E.2d 591 (1975); Brewer v. South Carolina State Highway Department, 261 S.C. 52, 198 S.E.2d 256 (1973). Following such trial, a magistrate may, but is not required to, apply the forfeited bond to the sentence if the sentence is a fine. However, if the sentence is a jail term, a magistrate typically issues a bench warrant which requires the defendant to be brought before the court to comply with the sentence. See: Opinion of the Attorney General dated May 23, 1980.

The opinion also advised that instead of permitting the forfeiture of any bail posted or trying a defendant in absentia, a magistrate could issue a bench warrant and have a defendant brought before him for trial. As stated in a previous opinion of this Office dated October 31, 1978, a bench warrant:

"... may be used to bring a defendant back before a particular court for a specific purpose after the court has acquired jurisdiction over the defendant by virtue of a proper charging document. For instance, if a defendant was released on bond and failed to appear at the proper time for trial, a bench warrant may be used to bring the defendant back before the court."

In State v. Abbott, 273 S.C. 170, 255 S.E.2d 673 (1979) the Supreme Court dealt with a case where appellants, charged with trespass, had been released upon payment of a cash bond. The Court held that upon failure of the appellants to appear before the magistrate at the time specified, the judge was authorized to declare the cash bonds forfeited.

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Therefore, as to a recognizance bond, generally such may only be estreated by the court of general sessions except for the fact that magistrates may confirm judgments of \$218.00 or less. As to any cash bond deposited with a magistrate as to a case pending in the magistrate's court, such may be forfeited in the manner set forth above.

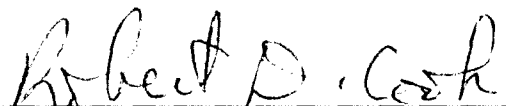
If there is anything further, please advise.

Sincerely,

  
Charles H. Richardson  
Assistant Attorney General

CHR/an  
Enclosures

REVIEWED AND APPROVED BY:

  
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