

The State of South Carolina



Office of the Attorney General

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November 13, 1990

The Honorable Daniel Pieper
Berkeley County Magistrate
Post Office Box 60965
North Charleston, South Carolina 29419

Dear Judge Pieper:

In a letter to this Office you raised questions regarding bond procedures. You asked

a. Is an employee of the sheriff who is working at the county jail authorized to accept and collect bond monies in lieu of a magistrate accepting and receipting the money?

1. Is a magistrate or the county potentially liable for improper accounting of any monies collected by a jail employee without the consent or knowledge of the magistrate?

b. May a law enforcement officer set a cash bond once a person is taken and committed to the county jail in lieu of taking the person before a judicial officer for the setting of bail?

1. Is there any difference if a highway patrolman, rather than a deputy sheriff, is involved?

c. May anyone other than a judicial officer or the clerk of court release a person from the county jail once a person is committed to the jail?

d. May a person be released to the sheriff in order to cooperate on an investigation without the sheriff filing a motion or any other paperwork before the bonding magistrate or circuit judge, or without an order of release properly filed and accounted for by the appropriate person?

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An opinion of this office dated August 9, 1982 indicated that employees of a county detention facility are not authorized to accept bond money from individuals accused of a criminal offense. The opinion made reference to Sections 17-15-10 et seq. and 22-5-530 of the Code and stated that such provisions along with the approved bail bond form "... clearly suggest that such money shall be deposited with either a designated clerk of court or, in the case of a person charged before a magistrate, with the magistrate." 1/ In particular, Section 17-15-10 refers to the defendant's "appearance" before the court in a bail proceeding. Section 22-5-530 which authorizes the deposit of a sum of money in lieu of bond refers to the defendant being "entitled to deposit with the magistrate" such sum. The bail bond form two which is used for deposits of cash in lieu of bond, cash percentage in lieu of bond and an appearance recognizance with surety clearly anticipates the appearance of the defendant before the court in executing such form.

The 1982 opinion is consistent with other opinions of this Office which have indicated that except where specifically authorized, the setting or collecting of bail by law enforcement officers is not authorized. See: Opins. of the Atty. Gen. dated January 12, 1981; January 15, 1980; April 26, 1979. Such opinions recognize that by statute certain law enforcement officers are authorized to accept bail. See: Section 23-5-50 of the Code (State highway troopers); Section 50-3-410 of the Code (State game wardens).

Also, an opinion of this Office dated April 26, 1979 dealt with the question of whether it is proper for a law enforcement officer to set a bond after an individual has been incarcerated or must the individual be carried before a judicial officer for the setting of bond. The opinion referred to Section 17-15-10 and its requirement for an appearance before a court and concluded that such provision "... appears to indicate the necessity of a hearing before a judicial officer whereby a determination may be made as to the release of an individual on bond." As to traffic cases, the opinion noted that generally "... the issuance of a uniform traffic ticket does not empower a law enforcement officer to set and accept cash bail. Instead, ... since the setting of bail is a judicial function, this authority can be granted to police officers only by action of the General Assembly." The opinion again referenced statutes where such

1/ Such opinion was cited in a memorandum from the State Court Administration to all magistrates and municipal judges. The memorandum references that the opinion states that "employees of a regional detention center may not accept from a criminal defendant money deposited in lieu of a bond or recognizance." See: S. C. Bench Book for Magistrates and Municipal Court Judges, VIII - 108.

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authority had been given to certain officers, such as state troopers and game wardens. Therefore, law enforcement officers are not generally authorized to set and accept bail. See also: Opins. of the Atty. Gen. dated December 22, 1987; February 15, 1979.

Therefore, in response to your questions, an employee of a sheriff working at a county jail is not authorized to accept and collect bond monies in lieu of a magistrate accepting such. Moreover, I am unaware of any authority for a magistrate to consent to the acceptance by such an employee. Obviously, there may be potential liability in situations where bail monies are collected by an unauthorized employee. Consistent with our prior opinions, law enforcement officers, except those statutorily authorized, such as state troopers and game wardens, are not authorized to set a cash bond once an individual is arrested and incarcerated in lieu of taking the individual before a judicial officer for the setting of bail. Generally, no one other than a judicial officer or clerk of court is authorized to release an individual from jail once that individual is incarcerated. See: Sections 17-15-10 et seq.

In your last question you asked whether an individual may be released to a sheriff in order to cooperate on an investigation without the sheriff filing a motion or other paperwork with a magistrate or circuit judge or without a properly filed order of release. A concise answer to your question is not readily available due to the variety of circumstances or facts that may differ in various situations. Certainly, there may be instances where so long as a sheriff retains custody of an individual and is responsible for and in control of that individual it would not appear that the individual should be considered "released," such as on bond, so as to mandate the court's approval. Of course, as to any individual considered a prisoner of the State Department of Corrections, consideration may also have to be given to that Department's guidelines in handling prisoners. Again, we cannot speculate or provide a concise answer which would be responsive to all situations involving prisoners in the type scenario you referenced.

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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