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The State of South Carolina



Office of the Attorney General

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May 8, 1989

The Honorable Dennis E. O'Neill
Municipal Judge, Town of Mount Pleasant
Post Office Box 457
Mount Pleasant, South Carolina 29464

Dear Judge O'Neill:

In a letter to this Office you stated that since the increase in penalties for driving under the influence and driving uninsured, your court has received a substantial increase in requests for jury trials. You stated that not all of the individuals who make these requests subsequently appear or respond to the NRVC notices which are mailed to them following their failure to appear. You have questioned whether the town of Mt. Pleasant could adopt a policy which would require individuals requesting a jury trial for offenses such as DUI to post a cash bond for the maximum amount of the possible fine at the time these individuals request a jury trial.

As to your reference to the NRVC (the Nonresident Traffic Violators Compact), of course, all traffic offenses are not subject to its provisions. Pursuant to Section 56-25-40 of the Code, the NRVC is inapplicable:

...if the officer requires the person to appear before a ...(judge)...or if the offense is (1) one which would result in the suspension or revocation of a person's license or privilege to drive under the laws of this State; (2) a violation of Section 56-1-440 prohibiting the operation of a motor vehicle without a valid driver's license; (3) a violation of a highway weight limitation....

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Section 22-5-530 of the Code states

(a)ll 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.

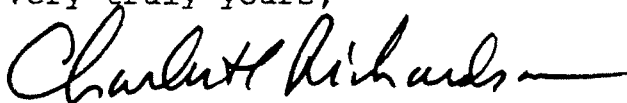
Pursuant to Section 14-25-45 of the Code, a municipal court shall "...have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates." Therefore, an individual is entitled to deposit with the judge a sum not to exceed the maximum fine instead of entering into a recognizance.

I am enclosing a copy of a prior opinion of this Office dated June 23, 1982 which states that requiring a defendant who requests a jury trial to post a bond which would not be required if a jury trial was not requested "...could have a chilling effect on a person's right to a jury trial." The opinion was referenced in a memorandum to all magistrates and municipal court judges from the State Court Administration Office dated November 22, 1983. See: S. C. Bench Book for Magistrates and Municipal Court Judges, p.VIII-126.

Therefore, as to your question, an individual may deposit with the court a sum not to exceed the maximum fine for any offense in lieu of entering into a formal bail bond. However, as referenced in the prior opinion of this Office, requiring such a procedure just of individuals who request a jury trial could be interpreted as imposing a "chilling effect" on these individual's right to a jury trial. Therefore, such a practice should be carefully considered.

With best wishes, I am

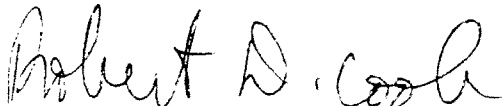
Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR:sds
Enclosure

REVIEWED AND APPROVED BY:



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EXECUTIVE ASSISTANT FOR OPINIONS