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The State of South Carolina

Office of the Attorney General

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November 6, 1989

Charles V. B. Cushman, III, Esquire
Camden City Attorney
Post Office Drawer 39
Camden, South Carolina 29020

Dear Mr. Cushman:

In a letter to this Office you referred to the policy of the City of Camden Municipal Court which requires the attendance in Court of parents of juveniles under eighteen years of age charged with offenses within the jurisdiction of that Court. You indicated that the policy required the attendance of the juvenile and his or her parents even if bond was forfeited prior to trial. You stated

> "It would appear to me that the juvenile or his parent would always have the right to forfeit bond and waive the right to a bench or jury trial and that we may not properly require the attendance of the juvenile or his parents at Municipal Court under these circumstances. It would further appear to me that the proper procedural manner in which to require the attendance of the parents of the juvenile, if at all, would be by Subpoena rather than by Summons."

I also talked with Municipal Court Judge Carl Reasonover concerning this policy. Judge Reasonover forwarded to this Office a copy of his Order directed to Camden law enforcement officers which states in part:

> all juveniles, seventeen (17) years of age and below who are arrested, cited or summoned for criminal or traffic violations under the City Code of Camden or the Code of the State of South Carolina, there is a requirement that their parent or legal guardian accompany them to court.

The practice of forfeiting bond 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, 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."

As to the authority of a municipal court judge to issue a rule, it is stated that "...courts have inherent power to do all things that are reasonably necessary for the administration of justice within the scope of their jurisdiction." 20 Am. Jur. 2d Courts, Section 79, p.440. Also, it is further stated that "...courts have an inherent power to prescribe such rules of procedure or practice as may be necessary for the proper administration of justice." Ibid, Section 82, p. 444. As to the referenced rule issued by Judge Reasonover, this Office is unable to definitively state that such an order is or is not within the authority of a municipal court judge in this State. I am unaware of any provision or State Court rule which specifically would authorize such a rule. By comparison, Rule 2 of the rules of civil procedure in magistrates' courts state that "...(e)ach magistrate may promulgate rules for the conduct of proceedings in his court which are not inconsistent with these rules and the South Carolina Code of Laws." Moreover, Article V, Section 4 of the State Constitution provides

> (t)he Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts.

Therefore, it may be appropriate for any questions regarding the status of the Order of Judge Reasonover to be addressed to the Office of State Court Administration.

If there is anything further, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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