

1508 February

The State of South Carolina



Office of the Attorney General

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March 22, 1985

The Honorable Morris Rudnick
City Recorder - City of Jackson
Post Office Box 544
Aiken, South Carolina 29801

Dear Judge Rudnick:

In a letter to this Office you questioned whether a defendant who requests a jury trial can be required to post a bond in excess of the fine which could be imposed for the offense with which the defendant is charged. Aside from the question of whether such a practice would be authorized inasmuch as it could be argued that such a requirement could have a "chilling effect" on a defendant's right to a trial by jury, present statutory law would prohibit such a requirement. Section 22-5-530, Code of Laws of South Carolina, 1976 provides:

"(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, Code of Laws of South Carolina, 1976, such provision is applicable to municipal courts.

As stated, a person charged with an offense triable in the municipal court may deposit a sum of money with the court instead of entering into a recognizance. However, such sum cannot exceed the maximum fine which could be imposed for the offense with which the person is charged.

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In your second question you asked whether a magistrate or municipal judge could require an affiant on an arrest warrant to post a bond that would require the affiant to be present at a subsequent court hearing. The only provision which I am aware of that would permit such a requirement is Section 17-15-70 of the Code of Laws of South Carolina, 1976. Such statute provides:

"(i) if it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it will become impracticable to secure his presence by subpoena, the magistrate or county judge before whom the matter will be heard, or any circuit judge, may impose conditions of release pursuant to §§ 17-15-10 through 17-15-100, or may order the person detained until and during the time of trial."

Such provision was cited in an earlier opinion of this Office dated November 3, 1977 as a means of insuring that an arresting officer who leaves law enforcement is present at any subsequent trials where his testimony would be needed. However, as specified by the statute, certain conditions such as the execution of an affidavit that certain testimony is material and a showing that obtaining an individual's presence by means of subpoena is "impractical", must be met before an appearance bond could be imposed. Therefore, I question whether such bonds could routinely be imposed.


If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions