1982 WL 189136 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
January 14, 1982

***1** George A. Markert
Assistant Director
South Carolina Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear George:
In a letter to this office, you questioned whether it is proper for a surety on a bail bond to surrender the principal in discharge of his liability on the bond without making a showing of a violation of the terms of the bond or of a danger that the principal will flee the jurisdiction.

As to your question, there is no case law or statutory law in this state completely dispositive of the matter. Recently, in Wilson et al. v. McLeod, 265 S.E. 2d 677 (1980), the following statement was made by the Court:
The business of bail bonding involves a principal charged with some crime being released from government custody into the custody of the bailor. Should he fear that he may lose custody of the principal, he is entitled, '. . . as a matter of right, at any time during the return term of the writ against them, to surrender their principal in discharge of their liability . . . Breeze v. Elmore, 4 Rich. 436, 38 S.C. Law 176 (1851).' 266 S.E. 2d 677 at 679.

Several opinions of this office have also dealt with the matter of a surety surrendering his principal. In a 1977 opinion, this office considered the question of whether a surety could return a defendant to the custody of the State, thereby being discharged of his liability on the bond, when the defendant had not violated any conditions of the bond but had refused to pay the premium to the surety. This office determined that when a principal refuses to pay a premium to a surety, the surety was authorized to surrender the defendant-principal and be relieved of his obligation. See: 1977 Op. Attorney General No. 77-271 at p. 208. The opinion did not further determine that a finding has to be made that there has been a violation of a condition of the bond in such circumstances.

In an opinion dated December 20, 1977, the following questions were presented:
1. Does a bail bondsman acting as the surety for a particular principal have the right to surrender the principal to proper authorities and thus be relieved of his obligation under the bond?

3. May a local authority refuse to accept the surrender by a surety of a principal?

This office determined as to Question 1 that:
'due to the nature of the relationship between a surety and a principal, it is generally accepted that a surety has the right to take the principal into custody, deliver him to the proper authority, and be relieved of his obligation under the bond.'

As to the third question, it was stated that:
'based on the common law right of a surety to surrender his principal, it appears that the local authority should accept the surrender of the principal.'

In another opinion dated January 27, 1978, it was determined that pursuant to the Bail Reform Act, a surety may only surrender his principal to a judicial officer in order to discharge himself from his obligation pursuant to the bail bond.

***2** As is obvious, the above referenced opinions appear to indicate that the right of a surety to surrender his principal and thus be relieved of his obligation under the bond is generally considered absolute. While the Supreme Court Wilson, supra, prefaced the surrender of a principal by a surety in discharge of his liability under a bail bond to a situation where there is a fear of losing custody of the principal, my research has not indicated that a court is given any discretion as to approving or disapproving such a showing prior to permitting the surrender of a principal by a surety. This is especially true when the following statement by the United States Supreme Court in Taylor v. Tainter, 16 Wall. 366, 371, 21 L.Ed. 287 (1873) is considered:
'When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge . . ..' 21 L.Ed 287 at 290. (Emphasis added.)

Therefore, a court has no discretion in accepting such a surrender.

As to any separate obligation between the surety and principal, it has been stated that:
'(a)lthough the surety may have the legal right to obtain his discharge by surrendering the principal, he has no such right as between himself and the principal, and the surety's surrender of the principal will not release him from his agreement to remain bail until the case is called for trial, or according to the terms of the bond. Accordingly, the principal may maintain an action against his surety in the event of an unwarranted surrender and recover at least the amount of the premium paid. If there is an agreement that the sureties will not exercise their lawful right to surrender the principal, there is implied, if not otherwise expressed, the duty of the principal so to conduct himself as not to cause reasonable apprehension on the part of the sureties as to whether he will answer the charge as required by law, and will not violate his duty to the sureties to be subject to their control.' 87 C.J.S. Bail, Section 87 p. 240.

Therefore, it appears that the matter of the obligation between the surety and principal is a matter totally separate from that of the surety's obligation to the State.

Referencing the above, it appears that the right of a surety to surrender his principal is absolute. However, in light of the separate obligation between the principal and a surety, it is questionable whether there would be any widespread or frequent practice of sureties surrendering principals without some adequate basis for such surrender.

If there are any questions concerning the above, please advise.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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