

1980 WL 120605 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 15, 1980

*1 Chief Herbert F. Payton
Post Office Box 36
Prosperity, South Carolina 29127

Dear Chief Payton:

In a telephone call to this Office you asked whether there can be a disposition of a traffic case on the same date the individual charged with the traffic offense is arrested. Your attention is directed to [Section 56-5-6220, Code of Laws of South Carolina, 1976](#), as amended, which provides:

‘(n)otwithstanding any other provision of law, the entry of any plea of guilty, the forfeiture of any bail posted or the entry of a plea of nolo contendere for a violation of the traffic laws of this State or any political subdivision thereof shall have the same effect as a conviction after trial under the provisions of such traffic laws. Provided, however, that in any such case where is bail is posted by the defendant, no forfeiture of such bail shall become effective until ten days following the date of arrest nor shall the defendant be required to plead prior to the elapse of such ten-day period. Provided, further that the provisions of this section shall not be construed to prohibit a defendant from voluntarily entering a plea or forfeiting bail within the ten day period.’ (Emphasis added.)

Therefore, pursuant to such section, an individual may waive the ten-day period provided by the above section for the disposition of a traffic case by entering a plea or forfeiting bail within the period. Thus, the disposition of a traffic case on the same date an individual is arrested is authorized. In any such situation, it is recommended that absolute assurances be made that the individual is voluntarily and intelligently entering a plea or forfeiting bail. While this Office can not provide any absolute system of making such assurances, it is recommended that some type of written statement indicating a voluntary and knowledgeable waiver of the above time period be signed by the defendant and kept in case the matter is later questioned. As to your question as to whether such a plea can be entered or bail forfeited on a Sunday, the matter can be resolved regardless of the day of the week. Therefore, a plea can be entered and bail forfeited on a Sunday.

You also asked whether a law enforcement officer or jailer is authorized to set bond for a person charged with a traffic offense or municipal ordinance violation and further whether a judicial officer may set bond by telephone instead of having the defendant brought personally before the judicial officer. Enclosed please find copies of previous opinions of this Office which indicate that the setting of bond is a judicial function and consequently, except for those law enforcement officers expressly authorized by statute to set and accept a cash bail, namely State highway patrolmen, State game wardens, and the Richland County Sheriff or his deputies, law enforcement officers generally are not authorized to set and accept bail. As to your question concerning the setting of bail by telephone, the enclosed opinion references that inasmuch as a hearing is required to set bail, setting bail by telephone is not authorized.

*2 If there are any questions concerning the above, please contact me.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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