

1979 WL 42812 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 15, 1979

*1 Mr. Neal Forney
Assistant Director
South Carolina Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear Mr. Forney:

In a letter to this Office, you asked:

1. Do Charleston County police officers have the authority to set bail in criminal cases?
2. Do Charleston County police officers have the authority to collect bail money for violations of traffic laws?

You stated that such officers have relied upon Sections 53-380 and 53-381 of the 1962 Code of Laws as authority for setting and collecting bail money.

In reference to your first question, I have been advised that Charleston County police officers do not as a practice set bail in criminal cases. Therefore, no response appears necessary. However, if such were done, it appears that the setting of bail by such officers would be improper inasmuch as research by this Office has revealed no specific statutory authority for such a practice.

As to your second question, it was indicated that reliance is placed on those sections codified as Sections 53-380 and 53-381 of the 1962 Code of Laws as authority for Charleston County police officers collecting bail money for traffic offenses. It was also indicated by the Charleston County Attorney's Office that Section 53-854 of the 1962 Code of Laws is cited as statutory authority for such a practice. However, in the opinion of this Office, such statutes do not serve as sufficient authority for such a practice. This is especially true when such statutes are compared with other code sections and acts specifically authorizing the acceptance of money as bail in lieu of bringing an individual before a magistrate or other judicial authority to enter into a formal recognizance or directly deposit a sum of money in lieu of recognizance or incarceration.

As you are aware, [Section 23-5-50 of the 1976 Code](#) of Laws specifically authorizes a highway patrolman to accept money as bail from an individual charged with the violation of any traffic or other law in lieu of bringing such person before a judicial officer. Similarly, [Section 50-3-410 of the 1976 Code](#) of Laws authorizes such a practice for state game wardens as to individuals charged with violating fish or game laws. Cash bonds similarly may be accepted from violators of litter statutes pursuant to [Section 16-11-710 of the 1976 Code](#) of Laws. Act 1151 of the 1972 Acts and Joint Resolutions of the General Assembly of South Carolina permits the Richland County Sheriff or any of his deputies to accept a cash bond from a traffic offender in lieu of bringing such person before a judicial officer.

A previous opinion of this Office, 1967 Ops. Att'y Gen. No. 2298, p. 118, indicated that the issuance of a uniform traffic ticket does not empower a law enforcement officer to set and accept cash bail. Instead, the opinion stated, since the setting of bail is a judicial function, this authority can be granted to police officers only by action of the General Assembly.' As stated, no such grant of authority as to Charleston County police officers is apparent.

*2 A review of Sections 53-380, 53-381, and 53-384, supra, indicates that such sections do not specifically authorize the acceptance of a cash bail from a traffic offender in lieu of bringing that person before a magistrate or other proper judicial officer to enter into a formal recognizance or directly deposit a sum of money in lieu of a recognizance or incarceration. Instead, Section 53-381 states:

(i)t shall be unlawful for any member of the county police force to accept or receive from any person any money for fine, bail, recognizance or otherwise unless at the same time such member of said county police force shall fill out a summons and receipt in triplicate, acknowledging the receipt of such money and stating this amount and purpose thereof and shall deliver to such person one copy thereof.

Section 53-854 similarly mandates that law endorsement officers in Charleston County provide receipts for any funds accepted.

While admitting that the above sections do reference the receipt of money by county police officers, there does not appear to be any statutory authority which specifically indicates that such officers may accept cash as bail from an individual apprehended for the violation of a traffic or other law in lieu of bringing that individual before a magistrate or other judicial authority to enter into a formal recognizance or directly deposit a sum of money in lieu of a recognizance or incarceration. Therefore, in the opinion of this Office, the referenced practices of Charleston County police officers setting and collecting bail is improper.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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