

1980 WL 120706 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 11, 1980

\*1 Mr. John Patrick  
Assistant Director  
South Carolina Court Administration  
P. O. Box 11788  
Columbia, SC 29211

Dear John:

In a letter to this office you raised several questions concerning the recent legislation dealing with preliminary hearings and bond procedures.

[Section 22-5-320 of the 1976 Code](#) of Laws as amended by Act. No. 393 of 1980 states in part:

‘(a)ny magistrate who issues a warrant charging a crime beyond his jurisdiction shall grant and hold a preliminary hearing of it upon the demand in writing of the defendant made within twenty (20) days of the hearing to set bond for such charge; provided, however, that if such twenty (20) day period expires on a date prior to the convening of the next term of General Sessions Court having jurisdiction, then the defendant may wait to make such request until a date at least ten (10) days before the next term of General Sessions Court convenes.’

Referencing such provision, you indicate that there is some confusion concerning the time period as to those cases where the twenty day period expires. You asked whether the second phrase ‘next term of General Sessions Court’ refers to the same term of court referred to by the first phrase ‘next term of General Sessions Court’ or does the second phrase refer to a subsequent term of court. In the opinion of this office, the second phrase ‘next term of General Sessions Court’ refers to the same term of court as the first term referenced and should not be construed as referring to a subsequent term of General Sessions Court. Such a determination is made upon a review of the history of the provision as well as discussion with key legislators responsible for such provision.

Act 393 of 1980 also amends Title 17 of the Code by adding Section 17-15-15. Subsection A of Section 17-15-15 states:

‘(i)n lieu of requiring actual posting of bond as provided in Item 17-15-10, the court setting bond may permit the defendant to deposit in cash with the clerk of court an amount not to exceed ten per cent of the amount of bond set, which amount, when the defendant fulfills the condition of the bond, shall be returned to the defendant by the clerk except as provided in subsection c.’

Referencing such, you have asked whether the provision applies only to those cases to be tried in circuit court or does it apply as well to cases within the trial jurisdiction of magistrates and municipal court judges. In the opinion of this office, such provision clearly applies to cases within the trial jurisdiction of magistrates and municipal court judges. As referenced, [Sections 17-15-10 et seq. of the 1976 Code](#) of Laws were amended by adding Section 17-15-15. [Section 17-15-10](#), referenced in the above amendment, specifies that:

‘(a)ny person charged with a noncapital offense triable in either the magistrate's, county or circuit court, shall, at his appearance before any of such courts, be ordered released pending trial . . .’

\*2 in the manner provided by such section. As noted, it is particularly provided that the provisions of [Section 17-15-10 et seq.](#) apply to an individual charged with offenses triable in magistrate's court. This office in an opinion dated February 16, 1978 held that pursuant to [Section 14-25-970, Code of Laws of South Carolina](#), 1976, as amended, the provisions of [Section 17-15-10 et seq.](#) similarly apply of municipal court offenses. Therefore, the provisions of Section 17-15-15(a) are applicable to cases within the trial jurisdiction of magistrates and municipal court judges.

[Section 22-5-530, Code of Laws of South Carolina](#), 1976, provides that a defendant may deposit with a magistrate a sum of money, not to exceed the maximum fine in the case for which the person is to be tried, in lieu of entering into a recognizance. Referencing such, you have asked whether Section 17-15-15(a), supra, permits an individual to deposit with a clerk of court ten (10%) percent of the maximum fine in lieu of entering into recognizance. In the opinion of this office, such a construction is not authorized. It appears that the provisions of Section 17-15-15(a), supra, apply only to cases where a bail bond situation is considered. The provisions of [Section 22-5-530](#) are unaffected by the language of Section 17-15-15(a), supra.

As noted in your requesting letter, Section 17-15-15(a), supra, provides that:

‘ . . . the court setting bond may permit the defendant to deposit in cash with the clerk of court an amount not to exceed ten percent of the amount of bond set . . . .’ (Emphasis added.)

Referencing such provision you have asked whether there are any restrictions on a magistrate's exercise of his discretion as to whether or not to permit the posting of ten (10%) percent of the amount of the bond. In the opinion of this office, such is a matter totally within the discretion of an individual magistrate. The Legislature in providing for such practice did not provide any guidelines as to matters to be considered by a magistrate in making such a determination and therefore this office is unable to do so. However, of course, the fact that such a matter is within the magistrate's discretion does not imply that such a determination concerning bond may be made arbitrarily or merely on personal whim. The term ‘discretion’, as to a determination by a judicial officer, has been defined by one court as:

‘ . . . ‘sound discretion’, not discretion exercised arbitrarily, but with due regard for that which is right and equitable under the circumstances, and directed by reason and conscience to a just result.’ [United States v. D'argento](#), 227 F.Supp. 596 at 600 (1974).

Therefore, a magistrate's decision as to whether or not to permit a defendant to make the cash deposit as specified by Section 17-15-15(a) should in all instances be a result of sound judicial discretion.

Section 17-15-15(a), supra, as referenced provides that the defendant is to deposit the cash amount with the clerk of court. You have asked whether such language prohibits the court setting bond, i.e., the magistrate's court or municipal court, from accepting the cash deposit and transmitting the deposit to the clerk of court. In the opinion of this office, such a procedure appears to be authorized. It appears that the intent of the amendment as a whole is to provide that such sums paid in lieu of being required to actually post bond pursuant to [Section 17-15-10, supra](#), are to be held by the clerk in deposit pending the disposition of the defendant's case. Therefore, I see no prohibitions against the magistrate or municipal court judge accepting such cash deposit and transmitting such to the clerk of court.

\*3 Hopefully the above is in full response to your inquiry. If there is anything further, please contact me.  
Sincerely,

Charles H. Richardson  
Assistant Attorney General

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