

1977 WL 37389 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 30, 1977

**\*1 RE: Bond Proceedings by Magistrates in Charleston County**

Mr. Neal Forney  
Assistant Director  
S.C. Court Administration  
P.O. Box 11788  
Columbia, SC 29211

Dear Mr. Forney:

You have inquired as to certain issues concerning bond proceedings by Magistrates in Charleston County.

First, without question, § 17-302 empowers the Magistrate to set bail. Next, according to § 17-300 of the South Carolina Code, the Magistrate determines the sufficiency of surety or sureties:

(a) Require the execution of an appearance bond in a specified amount with good and sufficient surety or sureties approved by the court.

Furthermore, a February 23, 1977, Attorney General Opinion (#3097) dictates that:

It would thus appear, and it is the opinion of this office, that in the absence of any special provision, there being none for Allendale County, a Magistrate has the authority to admit to bail or release upon his own recognizance anyone charged with a non-capital offense and in such instances, the Magistrate is charged with the duty and responsibility of determining the sufficiency of the surety or sureties accepted. (emphasis added).

Please note that the above opinion applies 'in the absence of any special provision'. Clearly, § 17-302 of the Code creates a local exception for Charleston County. Section 17-302 does not specify that the Magistrate approves the sufficiency of the surety. It only provides that:

In each case in which bail shall be allowed or received by the clerk of court of Charleston County under § 17-301 or under § 17-306 or § 17-307 he shall before discharging the person so admitted to bail, require each surety on any bond or recognizance to file with him certificates from the county auditor and register of mesne conveyance showing his legal qualification to act as surety on such bond or recognizance. (emphasis added).

Therefore, it is the opinion of this office, that in the county of Charleston, the Magistrate has the authority to set bail, but does not have the authority to approve sureties. It is only necessary that the surety file with the clerk of court, certificates from the county auditor and register of mesne conveyance showing his legal qualification to act as surety.

Discussing the second issue, within the letter of § 17-302 of the Code, the clerk of court can discharge the person admitted to bail pursuant to the payment of the bond and the surety filing with the clerk, 'certificates from the county auditor and register of mesne conveyance showing his legal qualifications to act as surety . . .'. Therefore, it is the opinion of this office that Magistrates in Charleston County must comply with § 17-302 of the Code.

In answer to the third and final issue, there are no statutes or case law denying the authority of the Magistrate to order the release of the defendant in the hypothetical posed by the third issue. According to 8 C.J.S. 126 (Bail § 47):

\*2 Ordinarily, a court may revoke or modify its order admitting the accused to bail.

Also, an order entered on an application for bail has been held not to be final in so far as the court which made it is concerned ([Smith v. Henson](#), 182 S.W.2d 666, 298 Ky. 182). In conjunction with § 17-302 of the Code, it seems that the clerk of court in Charleston County can discharge the person admitted to bail pursuant to the requirements of that section, notwithstanding the previous bond hearing and subsequent jailing of the defendant. In retrospect, it is the opinion of this office that the clerk of court of Charleston County may discharge the person admitted to bail pursuant to § 17-302 of the Code, in the hypothetical posed by the third issue. At most, a new bond hearing may be appropriate. Glad to be of service.

Respectfully yours,

Frank James  
Law Clerk

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