

1977 WL 37435 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 27, 1977

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QUESTION PRESENTED:

Can a magistrate order the release of a defendant in a noncapital case triable in magistrates' courts or courts of general sessions pursuant to Section 17-15-10, et seq., of the Code of Laws of South Carolina (1976), without the consent of the clerk of court?

AUTHORITY:

Sections 17-17-10, 22-5-510, Code of Laws of South Carolina (1976).

DISCUSSION:

The release on bail or recognizance of persons charged with criminal offenses under State law is governed generally by Sections 17-15-10, et seq., Code of Laws of South Carolina (1976) [formerly Sections 17-300, et seq., Code of Laws (1962)]. The prerequisites for release stated therein not include a requirement that the clerk of court consent to the release of an accused on bail or recognizance by a magistrate or otherwise approve the magistrate's exercise of discretion. Furthermore, Section 22-5-510, regarding the duties and authority of the magistrates, provides:

Magistrates may admit to bail any person charged with any offense the punishment of which is other than death or imprisonment for life, . . .

Again, no concurrence by the clerk of court in the decision to release is mentioned.

CONCLUSION:

Therefore, it is the opinion of this Office that a magistrate may order the release of a defendant in a noncapital case pursuant to Sections 17-15-10, et seq., without the additional consent or approval of the clerk of court.

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