

1978 S.C. Op. Atty. Gen. 31 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-17, 1978 WL 22503

Office of the Attorney General

State of South Carolina

Opinion No. 78-17

January 27, 1978

*1 TO: Mr. Neal Forney
Assistant Director
South Carolina Court Administration

QUESTION:

Must a surety surrender his principal to a judicial officer in order to discharge himself from his obligation under the bail bond?

STATUTES INVOLVED:

[Section 17-15-10, 1976 Code of Laws of South Carolina;](#)

[Section 17-15-50, 1976 Code of Laws of South Carolina;](#)

[Section 17-15-110, 1976 Code of Laws of South Carolina.](#)

DISCUSSION:

Persons charged with non-capital criminal offenses in this state may, *inter alia*, be ordered released into the custody of an approved surety or sureties pending trial upon a court's determination in its discretion that such action will reasonably assure that person's subsequent appearance before the proper tribunal for disposition of the charge. [Section 17-15-10 of the 1976 Code](#). Only the court may subsequently change the conditions of the bond. [Section 17-15-50](#).

Although there appear to be no statutes or cases dealing specifically with a surety's right to take his principal into custody, deliver him to the proper authority, and be relieved of his obligation under the bond, it nevertheless is certain in this state that such a right exists at common law. *See* Opinion of the Attorney General by Charles H. Richardson dated December 20, 1977. However, despite his original right arising from the undertaking in the bail bond to take the principal into custody, the surety may be relieved of his concomitant obligation to the State only upon proper discharge by the court. Such a position is consistent with the general terms of the Bail Reform Act ([Section 17-15-10 et seq.](#)) and particularly with the express provisions of [Section 17-15-110](#) thereof that its application shall not be made 'to a defendant who has been committed to jail by the court for a failure to comply with the terms of his recognizance.' (Emphasis added). *See generally* 8 AM.JUR.2d, *Bail and Recognizance*, Sections 129, 130, 131, pp. 854-856.

CONCLUSION:

Therefore, it is the opinion of this Office that under the terms of the Bail Reform Act a surety may only surrender his principal to a judicial officer in order to discharge himself from his obligation under the bail bond.

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