

1978 WL 34693 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 9, 1978

*1 Mrs. Sue H. Roe
Clerk of Court
Post Office Box 583
Aiken, South Carolina 29801

Dear Mrs. Roe:

You have requested an opinion from this office as to whether or not the Aiken County Council (Council) is authorized to enact an ordinance providing for the regulated licensing of bail bondsmen. In my opinion, it is not so authorized.

First, while it is true that the Council is empowered 'to levy uniform license taxes upon persons and businesses engaged in or intending to engage in any business, occupation or profession, in whole or in part, within the county but outside the corporate limits of any municipality' [[§ 4-9-30\(12\), CODE OF LAWS OF SOUTH CAROLINA, 1976](#)], that power is intended to be used as an additional source of county revenue and not as a method of regulating businesses, occupations and professions, especially in view of the fact that the provisions of the 'home rule' legislation do not grant the general police power to counties as they do to municipalities. See, [§ 5-7-30, CODE OF LAWS OF SOUTH CAROLINA, 1976](#). The power to levy business license taxes is not, in and of itself, the power to regulate those businesses apart from assessing them a specified amount in order to operate. For that reason, the provisions of the proposed ordinance which require bail bondsmen to obtain certificates from various officials before licensure are not authorized. Parenthetically, you should note that if the language of [Section 4-9-30\(12\) of the 1976 Code](#) means that the county can levy business license taxes only on those businesses which operate outside the corporate limits of a municipality (and it seems to read thus), then the ordinance cannot apply to bail bondsmen who operate solely within the corporate limits of any Aiken County municipality.

Moreover, according to an earlier opinion of this Office (a copy of which is enclosed herewith), bail bondsmen are considered to be engaged in the business of surety insurance and, accordingly, are subject to regulation by the South Carolina Insurance Department (Department). Assuming that that contention is correct, a county cannot additionally restrict the bail bond business since the State has pre-empted the field of regulation. Cf., [§ 4-9-30\(14\), CODE OF LAWS OF SOUTH CAROLINA, 1976](#). In other words, a county cannot prohibit what a state law allows so that, if the Department empowers a bail bondsman to engage in business upon compliance with certain requirements, a county cannot then prohibit that bail bondsman from engaging in business by imposing additional requirements. In this connection, item 4 of the proposed ordinance allows persons who obtain bond from the South Carolina Insurance Commissioner to be excepted from the certification requirements thereof; consequently, the ordinance might never be used because all bail bondsmen, assuming that they must be bonded by the Department, would then be eligible to opt out of complying with the certification requirements.

*2 Finally, insofar as the proposed ordinance imposes licensing duties upon the Aiken County Clerk of Court, it is most probably unauthorized since the Council is not empowered by the provisions of the 'home rule' legislation to alter, expand or infringe upon the duties of other county elected officials except in areas such as employee grievances [[§ 4-9-30\(7\), CODE OF LAWS OF SOUTH CAROLINA, 1976](#)], accounting and reporting [[§ 4-9-30\(8\), CODE OF LAWS OF SOUTH CAROLINA, 1976](#)] and centralized purchasing systems [[§ 4-9-160, CODE OF LAWS OF SOUTH CAROLINA, 1976](#)] and annual fiscal reports from all county offices, departments, boards, commissions or institutions receiving county funds [[§ 4-9-140, CODE OF LAWS OF SOUTH CAROLINA, 1976](#)].

Notwithstanding the above, there is general authority to the effect that a municipal corporation (or county) can license and regulate bail bondsmen. See, e.g., (McQUILLIN MUNICIPAL CORPORATIONS, §§ 26.102 and 26.102a (3rd ed. 1964). The regulatory authority, however, is premised upon the general police power which, as mentioned earlier, South Carolina counties do not possess by virtue of the 'home rule' legislation. Moreover, the cases cited appear to agree that local regulation of bail bondsmen is permissible only in the absence of any state law regulating them. See, e.g., City of Baltimore, et al. v. Stuyvesant Ins. Co., et al., (Md.) 174 A.2d 153; cf., State ex rel. Howell v. Schiele, (Ohio) 91 N.E.2d 5.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

ATTACHMENT

First Reading : January 10, 1978

Second Reading: January 24, 1978

Third Reading & Public Reading: February 7, 1978

?: Councilman Duebar

?: February 8, 1978

ORDINANCE NO.

**COUNCIL ADMINISTRATOR FORM OF GOVERNMENT
FOR AIKEN COUNTY (Hereinafter referred to as County Council)**

(To establish a uniform Bonding System in Aiken County for the protection of rights to citizens of Aiken County)

WHEREAS, the Bail Bonding System in Aiken County has been operating without guidelines during the past, and

WHEREAS, many individuals' rights have been denied because of no proper guidelines in the Bail Bonding System.

NOW THEREFORE BE IT ENACTED BY THE AIKEN COUNTY COUNCIL that a licensed Bail Bonding System be established for Aiken County, and that this system be conducted as follows:

1. That Bail Bondsmen who sign Bail Bonds for pay be known as professional Bail Bondsmen, and that a yearly fee of \$500.00 be charged to obtain license.

2. In order to further qualify to be a professional Bondsman the additional qualifications must be met:

a) Minimum net worth of \$25,000.00 must be met before approval to be licensed.

b) Obtain certificate from the County Auditor as to real property listed on Tax Digest and valuation.

c) Obtain certificate from the Registrar of Mesne Conveyance office that no mortgages exist on property.

d) Obtain license from the Clerk of Court who will check for judgments against property and final valuation before license is issued.

***3** 3. No Bondsman may at any time exceed his net worth or Bond on total amount of Bonds, and any violation of this Ordinance constitutes a cancellation of license without recourse, but does not cancel out financial obligation to Aiken County.

4. Any person(s) who wishes to obtain professional license without requirements under (a) through (c) in Paragraph 2 may do so by obtaining Bond from South Carolina Insurance Commissioner and ?? license from the Clerk of Court.

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ALSO BE IT FURTHER ENACTED that Magistrates continue to use P.R. (Personal Recognizance) and Indigent Bonds in those instances where they deem acceptable.

Adopted at the regular meeting of the Alken County Council on _____, 1973.

SIGNED:

Carrol H. Warner
Chairman

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