

1975 S.C. Op. Atty. Gen. 230 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4172, 1975 WL 22467

Office of the Attorney General

State of South Carolina

Opinion No. 4172

November 5, 1975

*1 A magistrate has authority to refuse to accept bonds submitted by a bondsman or surety company who present either a financial or moral risk.

TO: Samuel B. Mendenhall
State Senator
Rock Hill, S.C.

QUESTION PRESENTED:

Can a magistrate, by general policy, refuse to accept in his court the bonds of a particular bondsman?

AUTHORITIES CITED:

§ 43–241 Code of Laws of South Carolina [23 ALR2d 803](#), Annot.

[8 Am.Jur.2d ‘Bail and Recognizance’ § 8](#) 22 S.C.L.R. 182 (1970)

[United States v. Lee](#), 170 F. 613 (D.C.S.D. Ohio)

[Concord Casualty & Surety Co. v. United States](#), 69 F.2d 78 (2nd Cir.)

DISCUSSION:

Section 43–241 of the Code of Laws of South Carolina sets forth the responsibility of magistrates for admitting certain persons to bail by providing in part as follows:

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

Once the right to admission to bail has been judicially determined and the amount fixed, the question of the sufficiency of proffered sureties usually becomes ministerial in nature. [23 ALR2d 803](#), Annot. However, as the bail bond business affords peculiar opportunity for fraud, and because it may be so conducted as to seriously interfere with a fair and proper administration of the criminal laws, both the financial and the moral qualifications of a surety on a bail bond are of public concern. Accordingly, courts have inherent power to make reasonable rules for the regulation of the bail bond business. [8 Am.Jur.2d ‘Bail and Recognizance’ § 8](#).

In accepting or approving sureties, the courts must be vested with some degree of discretion as the only recognized valid purpose for imposing bail as a condition to pretrial release is to insure appearance at trial. See generally 22 S.C.L.R. 182 (1970). Thus, if a court should lack confidence in the surety's purpose or ability to secure the appearance of a bailed

defendant, it may refuse its approval of a bond even though the financial standing of the bail is beyond question. [United States v. Lee](#), 170 F. 613 (D.C.S.D. Ohio); [Concord Casualty & Surety Co. v. United States](#), 69 F.2d 78 (2nd Cir. 1934).

While there have been few decisions involving the power of a court to refuse to accept the bonds of a specific bondsman or surety company, the limited authority that exists clearly indicates that no court can be forced to accept bonds presented by persons representing either financial or moral risk. A concise exposition of the power of a court to regulate the bail bond business is set forth in [8 Am.Jur.2d 'Bail and Recognizance' § 8 at 787](#):

Courts have inherent power to make reasonable rules for the regulation of the bail bond business. A judge has authority to determine who shall and who shall not qualify as a bondsman in his own court, and if a surety company so conducts its business as to lose the confidence of the court or judge, the judge may refuse to approve the company's bonds.

***2** The actions of a magistrate in rejecting bonds proffered by a bail bondsman or surety company must be reasonable and must be aimed at protection of the integrity of the judicial process. The magistrate cannot act in an arbitrary or capricious manner and reject unobjectionable persons as sureties. 23 SLR2d 811, Annot.

CONCLUSION:

If a magistrate has cause to believe that a bondsman or surety company represents either a financial or moral risk, he may refuse to accept their bonds in his court. The action of the magistrate, however, must be reasonable as he has no right to reject in an arbitrary and capricious manner unobjectionable persons as sureties.

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