

1973 S.C. Op. Atty. Gen. 23 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3452, 1973 WL 21964

Office of the Attorney General

State of South Carolina

Opinion No. 3452

January 13, 1973

***1** When a bail bond is forfeited by a defendant when he does not appear for trial on an alleged violation of the Controlled Substances Act, the forfeiture levied and collected shall be remitted to the Commissioner of Narcotics and Controlled Substances to be used exclusively for the treatment and rehabilitation of drug addicts within the addiction center facilities operated by the Department of Mental Health.

Commissioner

Commission on Narcotics and Controlled Substances

You have requested an opinion from this office on Section 50 of Act No. 445 of the 1971 Acts, your inquiry relating to whether or not a bail bond forfeited by a defendant when he does not appear for trial on an alleged violation of the Controlled Substances Act coming within the purview of Section 50.

Section 50 of Act No. 445 is now codified as Section 32–1510.69, Code of Laws of South Carolina (1962), 1971 Cum.Supp., and provides as follows:

“All fines and forfeitures levied and collected by any court or administrative agency resulting from any violation of any provision of this article shall be remitted to the Commissioner of Narcotics and Controlled Substances to be used exclusively for the treatment and rehabilitation of drug addicts within the addiction center facilities operated by the Department of Mental Health.”

A forfeiture of bond is defined as “A failure to perform the condition upon which the obligor was to be excused from the penalty in the bond. [Hall v. Browning](#), 71 Ga.App. 835, 32 S.E.2d 424, 427” Black's Law Dictionary, 4th Ed., p. 778. On such noncompliance the procedure to estreat a bond or recognizance is regulated by Section 17–311, Code of Laws of South Carolina (1962). See [State v. Bailey](#), 248 S.C. 438, 151 S.E.2d 87.

“On default in the condition of a bond or recognizance it has been held to be a proper practice to enter a forfeiture ...” 8 C.J.S. Bail § 88.

It is to be noted that Section 50, *supra*, makes a distinction between “fines” and “forfeitures”, and in the opinion of this office when a bail bond has been forfeited, the forfeiture levied and collected shall be remitted to the Commissioner of Narcotics and Controlled Substances to be used exclusively for the treatment and rehabilitation of drug addicts within the addiction center facilities operated by the Department of Mental Health as provided under the provisions of Section 50 of Act No. 445 of the 1971 Acts.

See Also:

8 Am.Jur.(2d) Bail and Recognizance §§ 90, 91 17 Words and Phrases, Forfeiture, p. 485

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