1972 WL 25166 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
January 5, 1972

***1 Re: Reduction of Bail Bond by Magistrates**

Honorable O. Lang Hogon, Jr.
Magistrate
3rd District
Sumter, South Carolina 29150

Dear Magistrate Hogon:
You have inquired if in cases in which a criminal warrant has been issued by a magistrate in one county and subsequently forwarded to another county for service upon the accused the endorsing magistrate has the right to reduce the amount of bail set by the issuing magistrate.

At common law it was not necessary for the accused to be in custody prior to bail being set. 8 C.J.S. Bail § 36(2) (1962). Consequently, inasmuch as S. C. Code § 43–241, granting authority to magistrates to set bail, does not address this point and we have no South Carolina decisions on this point, it is presumptively proper for a magistrate to set bail limits for a person charged with an offense prior to the person being arrested.

Nevertheless, it is clear that in South Carolina an endorsing magistrate in another county also may admit the accused to bail and may thereby bind the accused to appear before a court of competent jurisdiction. State v. Rabens, 79 S.C. 542, 60 S.E. 442 (1908). Consequently, the question becomes whether of not the endorsing magistrate has the authority to reduce the bail set by the magistrate who originally issued the warrant.

There are no reported cases in this State concerning increase or reduction of a previously set amount of bail. A statement of the general law, however, is found in 8 C.J.S. Bail § 51 (1962) which states that the amount of bail, once fixed, should not be altered except for good cause. Situations which have been held to support a proper reduction of bail include those wherein the amount of bail appears to be excessive, wherein the accused has made an honest effort to raise bail but is unable to do so, and cases wherein a reduction would better serve the ends of justice or the public interest.

Consequently, it is the opinion of this office that an endorsing magistrate has the authority not only to set bail, but in cases where bail has already been set he may order a reduction for ‘good cause.’ However, until such time as ‘good cause’ is more precisely defined within this jurisdiction, it is recommended that reduction of bail be made only upon a very strong showing by the accused of the propriety of such reduction.
Sincerely,

John B. Grimball
Law Clerk

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