

March 28, 2007

The Honorable B. Lee Miller
Municipal Court Judge
Post Office Box 40
Greenwood, South Carolina 29648

Dear Judge Miller:

In a letter to this office you referenced a situation where a defendant is arrested in a municipality which has jurisdiction and is placed in the county jail to await a bond hearing the next day. Prior to the bond hearing, the defendant becomes ill and is taken to a hospital outside the municipal limits and county where he was arrested. You questioned whether the municipal judge can go the location to conduct a bond hearing or must the warrant be sent to the county where the defendant is located for a magistrate to conduct the bond hearing.

S.C. Code Ann. § 22-5-510 authorizes magistrates to admit defendants to bail for an offense, the punishment of which is other than death or life imprisonment. Such provision in subsection (B) states that

[a] person charged with a bailable offense must have a bond hearing within twenty-four hours of his arrest and must be delivered within a reasonable time, not to exceed four hours, after the bond is delivered to the incarcerating facility.

Pursuant to S.C. Code Ann. § 14-25-45, municipal judges have the same authority as magistrates to set bail.

Section E of the Criminal Section of the South Carolina Bench Book for Magistrates and Municipal Court Judges states that

[u]sually, the admitting magistrate or municipal judge is the judge in whose territorial jurisdiction the crime has been committed. However, if the arrest is made in a county other than that in which the offense is charged, the magistrate or municipal judge at the place of arrest may set bail. See State v. Rabens, 79 S.C. 542, 60 S.E. 442 (1908).

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As to the territorial jurisdiction of a municipal court, generally, as stated in an opinion of this office dated September 16, 1980, "...the territorial jurisdiction of the recorder's court is the limits of the municipality in which the court is created." See also: Op. Atty. Gen. dated December 20, 2006.

By an Administrative Order dated November 28, 2000, Chief Justice Toal ordered that

[a]ll persons incarcerated, booked, and charged with a bailable offense must have a bond hearing within twenty-four hours of their arrest as required by S.C. Code Ann. § 22-5-510. Further, the bonding magistrates must ensure that the procedures set forth in S.C. Code Ann. §§ 16-3-1505 to -1830, regarding victims' rights, are observed.

All incarcerated individuals must receive an in-person bond hearing conducted by a duly appointed judicial officer prior to their release. Bond hearings shall not be conducted over the telephone and orders of release shall not be transmitted by facsimile from remote locations. The only exceptions to these requirements is in those counties where videoconferencing of bond hearings is approved by Order of the Supreme Court.

Such Order also provides that bond proceedings are to be conducted twice daily and should a Chief Magistrate desire a schedule that deviates from the twice daily schedule, the revised schedule, along with the reason for the deviation, must be submitted to the Chief Justice for approval.

Section E of the Criminal Section of the Bench Book also references this Order of the Chief Justice and comments further that "[p]referential bond hearings are strictly prohibited and are considered a violation of the Rules of Judicial Conduct." See: Order of the Chief Justice dated November 28, 2000.

As stated above, typically, the municipal judge in whose territorial jurisdiction the crime has been committed is the judge that would hold a bond hearing. As to your question regarding a defendant who is removed from that jurisdiction, I can only suggest that if circumstances present themselves where an extraordinary bail hearing would be required, such as in the circumstances you referenced where a defendant is taken ill and hospitalized outside your territorial jurisdiction, you should contact the State Court Administration office for their guidance as to such circumstances. It may be necessary to get approval for a special bond hearing outside the municipal judge's regular jurisdiction or to have the bond hearing conducted by another judicial officer.

You also referenced a situation where a defendant is arrested in a municipality during the nonworking hours of operation of the court, booked into the county jail but then is transferred to an adjoining county jail due to law enforcement wanting to separate multiple defendants. You have

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questioned whether the municipal judge can go to the location outside the county to conduct a bond hearing or must the defendant be brought back to the municipal court for a bond hearing.

Consistent with the above, unless there is some type of special grant of authority, generally, there is no authority for a municipal judge to go to a location outside their regular municipal limits in order to conduct a bond hearing. Again, the territorial jurisdiction of a municipal court is the limits of the municipality in which the court is created. In the circumstances referenced by you, it appears that it would be necessary for the defendant to be brought back to the municipal court for a bond hearing.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

cc: Robert McCurdy, Esquire
South Carolina Court Administration

REVIEWED AND APPROVED BY:

Robert D. Cook
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