



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 15, 2024

Wade White, Esq.
Attorney, Neshoba County
501 Main Street
Philadelphia, Mississippi 39350

Re: Authority to Set Bonds

Dear Mr. White:

The Office of the Attorney General has received your request for an official opinion.

Questions Presented

1. May the sheriff set the amount and conditions of a bond for the release of a detainee?
2. If the sheriff is not allowed to be the individual to set the amount and conditions of the bond, may the sheriff disallow cash bonds and only allow the posting of bonds by a bail bondsperson?

Brief Response

1. A sheriff may (1) set bail for persons arrested for misdemeanors when bond has not been fixed and approved by a judicial officer and (2) set the amount of bond for felony offenses under emergency circumstances as set forth in Mississippi Code Annotated Section 19-25-67.
2. Pursuant to Section 99-5-9, it is the committing court's decision to allow or disallow cash bonds.

Applicable Law and Discussion

You first ask if the county sheriff may set the amount and conditions of a bond for the release of a detainee. This office has previously opined that yes, a sheriff may set bonds in certain limited circumstances. *See MS AG Op., Tolar at *1 (Oct. 31, 2003); MS AG Op., Welch at *1 (Aug. 16,*

1995). First, “a sheriff has the authority to set and approve bail,¹ where not already fixed and approved by a judicial officer, for persons arrested for misdemeanor offenses.” MS AG Op., *Tolar* at *1 (citing MS AG Op., *Welch* at *1). Second, pursuant to Section 19-25-67, “a sheriff may set the amount of bond for bailable felony offenses under ‘emergency circumstances.’” *Tolar* at *1.

In *Welch*, this office relied on Section 99-33-7 and *Sheffield v. Reece*, 28 So. 2d 745 (Miss. 1947), in concluding that a sheriff may set bail for persons arrested for misdemeanors when it has not been fixed and approved by a judicial officer. Section 99-33-7 states:

It is lawful for any officer having a person in custody by virtue of a warrant of a justice court judge, in a case in which the judge has a final jurisdiction, to take bond with sufficient sureties, in a sum of not less than Fifty Dollars (\$50.00), nor more than One Thousand Dollars (\$1,000.00) . . . *and to fix the amount of the bond*, which shall be returned to the judge and be filed and proceeded on by him in a case of forfeiture, if for not more than Two Hundred Dollars (\$200.00), as in like cases in the circuit court, as near as may be.

(emphasis added). Beyond Section 99-33-7’s limited allowance, in *Sheffield*, the Mississippi Supreme Court reasoned that the Constitution gives a sheriff implied authority to set bail in instances that would otherwise result in a citizen being held in custody for an unreasonable length of time:

An officer should need no authority other than that implied under the Constitution and the statutes hereinbefore discussed to inform him that he should not hold the citizen in custody for an unreasonable length of time in violation of his constitutional right to bail. It would be better that an offender, who is arrested without a warrant by a sheriff or private person on their own authority, be released without bail, than that he should be detained in jail in violation of the Constitution.

28 So. 2d at 748.

This reasoning aligns with Section 19-25-67, which applies specifically to felony offenses and states that a sheriff

may take bonds, with good and sufficient sureties, of any person whom he may

¹ Pursuant to Section 83-39-1(j), “Bail” means the use of money, property or other security to cause the release of a defendant from custody and secure the appearance of a defendant in criminal court proceedings, or the monitoring or supervision of defendants who are released from custody on recognizance, parole or probation, except when such monitoring or supervision is conducted after conviction, sentencing or other adjudication and solely by public employees.

Often used interchangeably, “a bail bond is ‘[a] bond given to a court by a criminal defendant’s surety to guarantee that the defendant will duly appear in court in the future and, if the defendant is jailed, to obtain the defendant’s release from confinement.’” MS AG Op., *Rasco* at *1 (Oct. 2, 2023) (quoting *Bail Bond*, BLACK’S LAW DICTIONARY (11th ed. 2019)).

arrest with or without a warrant for any felony that is bailable as a matter of law. *He may fix the amount of such bonds, only in emergency circumstances.* “Emergency circumstances” means a situation in which a person is arrested without a warrant and cannot be taken before a judicial officer for a determination of probable cause within a reasonable time, or within forty-eight (48) hours, whichever is the lesser, after the arrest.

(emphasis added).

For these reasons, it is the opinion of this office that a sheriff may (1) set bail for persons arrested for misdemeanors when it has not been fixed and approved by a judicial officer, and (2) set the amount of bond for felony offenses under emergency circumstances as set forth in Section 19-25-67. Beyond this, Mississippi law does not speak to a sheriff’s ability to set bond conditions.

You next ask if the sheriff can disallow cash bonds and only allow the posting of bonds by a bail bondsperson. Section 99-5-9 addresses cash bonds and provides, in part:

(1) In addition to any type of bail allowed by statute, *any committing court, in its discretion, may allow any defendant, to whom bail is allowable, to deposit cash as bail bond in lieu of a surety or property bail bond*, by depositing such cash sum as the court may direct with the sheriff or officer having custody of defendant, who shall receipt therefor and who shall forthwith deliver the said monies to the county treasurer, who shall receipt therefor in duplicate. The sheriff, or other officer, upon receipt of the county treasurer, shall forthwith deliver one (1) copy of such receipt to the committing court who shall then order the release of such defendant.

(2) *The order of the court shall set forth the conditions upon which such cash bond is allowed* and shall be determined to be the agreement upon which the bailee has agreed.

(emphasis added). Accordingly, it is the opinion of this office that it is the committing court’s decision to allow or disallow cash bonds.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Maggie Kate Bobo

Maggie Kate Bobo
Special Assistant Attorney General