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ATTORNEY GENERAL OPINION NO. 89- 113

The Honorable B. D. Kanan
State Senator, Fifth District
5111 Garfield
Kansas City, Kansas 66102

Re: Criminal Procedure--Conditions of Release--Release
Prior to Trial; Exoneration; Appearance Bonds

Synopsis: The purpose of an appearance bond is to assure the presence of persons accused of crimes at the time and place of the trial. The purpose of the appearance bond is deemed fulfilled when the accused appears for a hearing and a verdict is announced. Unless an agreement states otherwise, an appearance bond cannot be retained to insure completion of programs imposed by the court or payment of fines assessed against the defendant. Cited herein: K.S.A. 22-2202, 22-2208, 22-2802.

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Dear Senator Kanan:

As State Senator for the Fifth District, you have requested our opinion regarding the retention of appearance bonds to insure completion of programs imposed by the courts and payment of fines assessed against the defendant. Specifically, you ask:

- whether an appearance bond may be held until the fine assessed against the defendant is paid.
- whether a fine assessed against the defendant can be

deducted from the appearance bond and the balance returned to the surety.

- whether an appearance bond may be held until the completion of programs, i.e. diversion, education and treatment, and community service, imposed by the court.
- whether an appearance bond intended to cover compliance with the judgment must contain a written provision so stating.

An appearance bond is defined in K.S.A. 22-2202(2) as "an agreement, with or without security, entered into by a person in custody by which the person is bound to comply with the conditions specified in the agreement. The purpose of the statutes requiring bond from persons accused of crimes is to assure their presence at the time and place of the trial. State v. Foy, 224 Kan. 558, 562 (1978); and Craig v. State, 198 Kan. 39, 41 (1967). When the conditions of the appearance bond have been satisfied or the forfeiture thereof has been set aside or remitted, the court shall discharge the obligor from further liability. K.S.A. 22-2208.

The appearance bond may take the form of either a surety agreement or a cash deposit. K.S.A. 22-2802. In the surety agreement the law looks to the surety to guarantee the appearance of the accused. 8 C.J.S. Bail, §88, p. 109 (1988). The terms of the agreement will determine the extent of the surety's liability. Unless the agreement states otherwise, the obligations of the surety are deemed to be fulfilled when the accused person appears at a hearing and the verdict is announced. The extension of the surety's obligations into concerns post conviction cannot be achieved without the consent of the surety. See State v. Indemnity Insurance Co. of North America, 9 Kan. App. 2d 53, Syl. ¶1 (1983); and State v. Chappell, 11 Kan. App. 2d 546 (1986).

If the appearance bond is in the form of a cash deposit, the law looks to the money already in the hands of the state to assure the presence of the accused at the time and place of the trial. 8 C.J.S. Bail, §88, p. 109 (1988). The authority of a court to retain a cash deposit or to apply the deposit to the payment of court costs or a fine imposed on the accused depends wholly on statute since a court has no inherent power to do so. 8 C.J.S. Bail, §89, p. 111 (1988). See Campbell v. Reno County, 97 Kan. 68 (1916). Because there is no statute in Kansas extending such

authority to the courts, retention of the cash deposit or application of the cash deposit to court costs or fines is impermissible.

The purpose of the appearance bond is to assure the presence of the accused at the time and place of the trial. Unless the parties agree otherwise, the purpose of the appearance bond is fulfilled upon the announcement of the verdict. Therefore, it would be improper for the court to retain an appearance bond to insure completion of programs imposed by the court or payment of fines assessed against the defendant.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General

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