



ALAN WILSON
ATTORNEY GENERAL

August 20, 2013

The Honorable Gene T. Janikowski
Municipal Judge
Goose Creek Municipal Court
519 N. Goose Creek Blvd.
Goose Creek, South Carolina 29445

Dear Judge Janikowski,

You seek an opinion of this Office as to whether a municipal judge may sign arrest and search warrants at his or her residence which is located outside the boundaries of the municipality over which he or she has jurisdiction. By way of background, you state:

All requests to sign arrest warrants and search warrants would be for the city that the judge has jurisdiction over. The actual physical signing of the warrants would be all that would take place at the residence. There would be no hearings, trials, etc. that would take place at the residence. All court action ... would still take place in the courtroom that is physically located within the municipal ... limits.

Law/Analysis

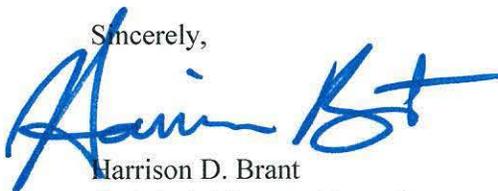
Our State Constitution provides that "no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained." S.C. Const. Art. I, § 10. The issuance of search warrants is generally governed by S.C. Code § 17-13-140 which provides that "[a]ny magistrate or recorder or city judge having the powers of a magistrate, or any judge of any court of record of the State having jurisdiction over the area where the property sought is located, may issue a search warrant" That section goes on to provide that search warrants "shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant...." See also State v. McKnight, 291 S.C. 110, 112, 352 S.E.2d 471, 472 (1987) (noting the Legislature, pursuant to § 17-13-140's mandate that a search warrant be issued upon a sworn affidavit, has imposed stricter requirements for search warrants than Federal or State Constitutions).

As for arrest warrants, § 22-3-710 provides that "[a]ll proceedings before magistrates in criminal cases shall be commenced under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue." This section applies to municipal judges as well. See § 14-25-45 ("Each municipal court shall ... have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates").

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We are aware of no requirement under South Carolina law that a magistrate or municipal judge sign or issue a warrant from either a specific location, e.g., the courthouse or his or her office, or some location within the territorial limits of the jurisdiction over which the judge exercises authority. Furthermore, § 14-25-45 provides "[a] municipal judge shall not be required to be a resident of the municipality by whom he is employed." Thus, we see no reason why the fact that a warrant was signed or issued by a municipal judge from his or her residence, whether or not such residence is located within the territorial limits of the municipality, would have any effect on the validity or sufficiency of the warrant. Jurisdictions which have considered the issue appear to unanimously agree. See U.S. v. Strother, 578 F.2d 397 (D.C. Cir. 1978) (search warrant issued by federal magistrate appointed to D.C. District Court was not invalid because issued from her home in Virginia where magistrate was not required to live in district and execution of warrant occurred within district in which magistrate was empowered to act); State v. McCowan, 331 Mo. 1214, 1222, 56 S.W.2d 410, 414 (Mo. 1932) (rejecting argument that search warrant was invalid because issued by justice from his home because "a justice of the peace is [not] limited to acting in such a manner only at his office or courtroom, particularly at times when such officer or courtroom would not ordinarily be open for official business"); 79 C.J.S. Searches § 187 ("A warrant issued by a magistrate at his or her home and after business hours is not invalid for those reasons"); 68 Am. Jur. 2d Searches and Seizures § 208 ("The territorial limitation on a magistrate's authority to issue a search warrant involves the area within which a magistrate's warrant can validly take effect, and does not prohibit a magistrate's signing a warrant outside the area so defined"). Accordingly, it is our opinion that a search or arrest warrant is not rendered invalid solely by virtue of the fact that it was signed or issued by a municipal judge from his or her residence located outside the territorial limits of the municipality he or she is employed by.

Sincerely,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General