

6444 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 30, 1998

Mr. Calvin King
Greenville County Animal Control
County Square
301 University Ridge, Suite 4100
Greenville, South Carolina 29601-3665

Re: Informal Opinion

Dear Mr. King:

On behalf of Greenville County Animal Control, you state that "questions have been raised as to the legality of [officers who fail] ... to witness violations of the County Ordinance asking the complaining parties to give statements along with photographs or videos to obtain a warrant in connection with the said violation." You further state that officers "have been advised to let citizens sign these warrants themselves." However, it is the opinion of your office "that the County and the Officer should be the responsible party for enforcing a County Ordinance." You wish to know whether "the use of statements as a means of enforcing the law put the Officer and County at any ... risk [of liability]?"

Law / Analysis

Your question has been addressed by me in an Informal Opinion, dated July 19, 1996. I am enclosing a copy of this Opinion for your review.

The Opinion dealt with the use of the County Ordinance Summons authorized pursuant to S.C. Code Ann. Sec. 56-7-80 when the Animal Control Officer does not observe the offense. Section 56-7-80 provides as follows:

Request

(A) Counties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein for the enforcement of county and municipal ordinances, upon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons. Any county or municipality adopting the ordinance summons is responsible for the printing, distributing, monitoring, and auditing of the ordinance summons to be used by that entity.

(B) The uniform ordinance summons may not be used to perform a custodial arrest. No county or municipal ordinance which regulates the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons.

(C) An ordinance summons must cite only one violation per summons and must contain at least the following information:

- (1) the name and address of the person or entity charged;
- (2) the name and title of the issuing officer;
- (3) the time, date, and location of the hearing;
- (4) a description of the ordinance the person or entity is charged with violating;
- (5) the procedure to post bond; and
- (6) any other notice or warning otherwise required by law. ...

(D) Service of a uniform ordinance summons vests all magistrate's and municipal courts with jurisdiction to hear and dispose of the charge for which the ordinance summons was issued and served.

(E) Any law enforcement officer or code enforcement officer who serves an ordinance summons must allow the person to proceed without first having to post bond or to appear before a magistrate or municipal judge. Acceptance of an ordinance summons constitutes a person's recognizance to comply with the terms of the summons.

(F) Any person who fails to appear before the court as required by an ordinance summons, without first having posted such bond as may be required or without having been granted a continuance by the court, is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than thirty days. Any law enforcement agency processing an arrest made pursuant to this subsection must furnish such information to the State Laws Enforcement Division as required by Chapter 3 of Title 23.

(G) This statute does not prohibit a county or municipality from enforcing ordinances by means otherwise authorized by law.

The Opinion went on to conclude that, unlike the common law and statutory law in South Carolina, which requires that "in order to arrest for a misdemeanor not committed in the officer's presence, either a warrant must be obtained or there must be probable cause that the offense has been freshly committed," the County Ordinance Summons contains no such requirement. Thus, in view of the fact that a County Ordinance Summons does not involve a custodial arrest, we declined to imply the general rule that a misdemeanor offense must occur in the presence of the officer in order to arrest without a warrant to the circumstances of the County Ordinance Summons.

Of course, with respect to an arrest warrant, we have consistently stated that "[a]ny citizen who has reasonable grounds to believe that the law has been violated has the right to cause the arrest of a person who he honestly and in good faith believes to be the offender." Op. Atty. Gen., Op. No. 93-74 (November 4, 1993), quoting 22 C.J.S., Criminal Law, Section 326, p. 392. Furthermore, the probable cause expressed in the affidavit of an arrest warrant may be based on personal knowledge or hearsay. Op. Atty. Gen., March 18, 1980. The affiant to an arrest warrant must be able to satisfy an inquiring magistrate that sufficient facts and information exist to support the warrant

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which determination is entirely within the magistrate's judgment. The penalty for perjury attaches to the facts alleged in the affidavit.

Thus, who actually signs the warrant in a given situation is not something that can be resolved in an Opinion of this Office. However, you may wish to consider the option of the County Ordinance Summons which we believe does not require that the Officer must have actually observed the offense and could be used as a charging document in the same way that an arrest warrant could. Such an option could provide greater flexibility in your situation.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an
Enclosure