

The State of South Carolina



Office of the Attorney General

Opinion 1687-29
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April 13, 1987

The Honorable Michael R. Davis
Richland County Magistrate
P. O. Box 9523
Columbia, South Carolina 29290

Dear Judge Davis:

In a letter to this Office you referenced that pursuant to Sections 44-53-1390, 44-53-500, and 48-1-50(24) of the Code administrative inspection warrants may be issued to authorize inspections of certain premises by personnel of the Department of Health and Environmental Control. Such warrants are issued pursuant to provisions of the Pollution Control Act, the Lead Poisoning Prevention and Control Act, and provisions dealing with controlled substances. You have questioned whether such warrants must conform to search warrant forms as approved by this Office pursuant to Section 17-13-160 of the Code.

In the opinion of this Office, administrative inspection warrants issued pursuant to the above-referenced provisions are distinguishable from search warrants. Therefore, such warrants are not required to be in the form approved for search warrants by this Office.

The type administrative inspection warrants issued to permit inspections by DHEC personnel are of the type recognized by the United States Supreme Court in Marshall v. Barlow's Inc., 436 U.S. 307 (1978) and the earlier cases of See v. Seattle, 387 U.S. 541 (1967) and Camara v. Municipal Court, 387 U.S. 523 (1967). In Camara, the court held that a residential occupant had a right to insist that a city housing inspector obtain a warrant prior to inspecting the premises for building code violations. In See, the Court held that a commercial occupant could not be convicted for refusing to consent to a warrantless inspection of a building for fire code violations. While ruling that a warrant was necessary, the Court held that

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the standard of probable cause required to obtain an administrative search warrant is less stringent than the standard required to be met for a search pursuant to a criminal investigation. As stated by the court in Marshall, "probable cause in the criminal law sense is not required." 436 U.S. at 320. Inasmuch as the standard required to be met to obtain an administrative inspection warrant is less than that for a criminal search warrant, the warrants issued pursuant to Sections 44-53-1390, 44-53-500, and 48-1-50(24) are distinguishable from search warrants, and, therefore, are not required to be in the form approved by this Office for search warrants pursuant to Section 17-13-160.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions