

1984 S.C. Op. Atty. Gen. 276 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-122, 1984 WL 159928

Office of the Attorney General

State of South Carolina

Opinion No. 84-122

October 10, 1984

\*1 The Honorable David H. Maring  
Chief Family Court Judge  
Fifteenth Judicial Circuit  
Post Office Box 806  
Georgetown, South Carolina 29440

Dear Judge Maring:

In a telephone conversation you questioned whether arrest warrants charging violations of an order of protection issued pursuant to [Sections 20–4–10 et seq., Code of Laws of South Carolina](#), 1976, as amended [the Protection from Domestic Abuse Act—hereafter ‘the Act’] may be executed on Sunday. Pursuant to [Section 16–25–50, Code of Laws of South Carolina](#), 1976, as amended, any individual violating such an order is guilty of a misdemeanor. For such violation, a fine of not more than two hundred dollars or imprisonment for not more than thirty days is specified.

In responding to your question reference must be made to the provisions of [Section 16–25–70, Code of Laws of South Carolina](#), 1976, as amended, which state that:

‘[a] law enforcement officer may arrest, with or without a warrant, a person at his place of residence or elsewhere if the officer has probable cause to believe that the person is committing or has freshly committed any misdemeanor or felony under the provisions of [Section 16–25–20](#) or [Section 16–25–50](#) even if the act did not take place in the presence of the officer. The officer may, if necessary, verify the existence of an order of protection by telephone or radio communication with the appropriate police department.’

Therefore, pursuant to such provision a warrant is not necessary under the referenced circumstances.

Responding to your question, pursuant to [Section 17–13–90, Code of Laws of South Carolina](#), 1976:

‘[n]o criminal process shall be served on Sunday, except for treason, felony, violation of the law relating to intoxicating liquors, gambling, or illegal drugs, or breach of the peace.’

Criminal process is usually considered as something in the nature of a formal writing, such as an arrest warrant. In a previous opinion, 1968 *Op. Atty. Gen.* No. 2487 at p. 159, this Office stated that generally an arrest could be made on Sunday of a misdemeanor if the offense is committed in the presence of the arresting officer and the arrest is affected during the commission of the offense or immediately thereafter.

As provided in [Section 17–13–90](#), *supra*, no criminal process may be served on Sunday except for the offenses noted. Among such are a breach of the peace. In a previous opinion of this Office, 1967 *Op. Atty. Gen.* No. 2331 at p. 154, it was stated that an arrest warrant charging the offense of assault and battery may be served on Sunday inasmuch as such offense is included within the class of offenses to which the term ‘breach of the peace’ applies. In such opinion, the factual situation involving physical violence in a private home between a husband and wife was particularly referenced. The opinion stated that:

'breach of the peace is a common-law offense which is not susceptible of exact definition. It is a generic term embracing a great variety of conduct destroying or menacing public order and tranquility.' See also: [State v. Poinsett, 250 S.C. 293, 157 S.E.2d 570 \(1970\)](#); [Atty. Gen. Op.](#) dated Sept. 21, 1979 [speeding—a breach of the peace].'

\*2 Inasmuch as a criminal warrant charging a breach of the peace may be served on Sunday, for an arrest on Sunday pursuant to a warrant charging a violation of an order of protection to be permitted, such violation must constitute a breach of the peace. An order of protection is defined as ' . . . an order . . . issued to protect the petitioner or minor family or household members from the abuse of another family or household member . . . ' Pursuant to Section 20–4–60, [supra](#), such order may include '(1) Temporarily enjoining the respondent from abusing, threatening to abuse, or molesting petitioner or the person or persons on whose behalf the petitioner was filed.

(2) Temporarily enjoining the respondent from communicating or attempting to communicate with petitioner in any way which would violate the provisions of this chapter and temporarily enjoining respondent from entering or attempting to enter petitioner's place of residence, employment, education, or other location as the court may order.'

In the opinion of this Office, if an order of protection includes the provisions of subsection (1) [temporarily enjoining a respondent from abusing, threatening to abuse, or molesting a petitioner], the violation of such provision would constitute a breach of the peace thereby warranting service of criminal process on Sunday. However, if an order were limited solely to the provisions of subsection (2) dealing with enjoining a respondent from communicating with a petitioner or entering a location associated with respondent, or if such conduct was the only conduct committed by a respondent in violation of an order of protection, it is highly questionable whether such would constitute a breach of the peace.

Further support for the determination that the particularly referenced conduct constitutes a breach of the peace is gathered from the fact that the Legislature in enacting the domestic abuse act recognized that as to certain situations involving domestic abuse, emergency procedures are authorized. Such was referenced in another opinion to you dealing with the question of whether a petition or order of protection issued pursuant to the Act may be served on Sunday. The opinion further stressed that in certain instances legislative conflicts must be harmonized so as to avoid an absurd result. Also, as noted previously, the Legislature pursuant to [Section 16–25–70, supra](#), authorized warrantless arrests under the circumstances referenced above. Such also supports the conclusion that any conflict with [Section 17–13–90, supra](#), must be reconciled so as to avoid an absurd result. Therefore, arguably, criminal process charging a violation of an order of protection, which enjoined a respondent from abusing, threatening to abuse, or molesting a petitioner, may be executed on Sunday.

Referencing such, it is clear that for the procedures provided by the Legislature for protecting victims of domestic abuse to be effectively utilized, [Section 17–13–90, supra](#), must be construed as authorizing service of criminal process on Sunday where there is a violation of a provision of an order of protection which enjoins a respondent from abusing, threatening to abuse, or molesting a petitioner. However, for the violation of any other provisions of such an order, it is questionable whether service of criminal process is authorized. Obviously, however, as to both situations legislative clarification is desirable.

\*3 If there are any questions, please advise.

Sincerely,

Charles H. Richardson  
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