

1978 S.C. Op. Atty. Gen. 207 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-179, 1978 WL 22647

Office of the Attorney General

State of South Carolina

Opinion No. 78-179

October 31, 1978

**\*1 SUBJECT: Magistrates, Warrants**

A bench warrant is not required to be in the form prescribed for arrest warrants.

TO: Neal Forney  
Assistant Director  
South Carolina Court Administration

QUESTION:

Is a bench warrant issued by a magistrate required to be in the form prescribed by the Attorney General pursuant to [Section 17-13-160 of the 1976 Code](#) of Laws and adopted by the South Carolina Supreme Court by Order dated August 25, 1978?

STATUTES AND CASES:

[Section 17-13-160, Code of Laws of South Carolina 1976](#); [Section 17-15-10, et. seq., Code of Laws of South Carolina, 1976](#).

DISCUSSION:

According to [Section 17-13-160](#) of the 1976

Notwithstanding any other provision of law, effective September 1, 1975, all arrest warrants and search warrants issued by the State or any political subdivision thereof shall be in a form as prescribed by the Attorney General . . .

Pursuant to such, the South Carolina Supreme Court by Order dated August 25, 1978 ordered that from and after October 1, 1978, the arrest warrant most recently approved by this Office is to be the only warrant effective in this State and its political subdivisions. As to your question of whether a bench warrant issued by a magistrate is required to be in the form prescribed by this Office and adopted by the Court as above-referenced, it appears that bench warrants, not being arrest warrants per se, are not required to be in such a form. However, it is the opinion of this Office that [Section 17-13-160, supra](#), is broad enough to authorize the preparation and use of a uniform bench warrant in this State.

It may also be noted that bench warrants, regardless of form, may not be used to initiate a criminal action. Instead, such may be used to bring a defendant back before a particular court for a specific purpose after the court has acquired jurisdiction over the defendant by virtue of a proper charging document. For instance, if a defendant was released on bond and failed to appear at the proper time for trial, a bench warrant may be used to bring the defendant back before the court. However, if the defendant having been released on bond pursuant to [Section 17-15-10](#) through [17-15-100 of the 1976 Code](#) of Laws was charged with failing to appear before the court as required, pursuant to [Section 17-15-](#)

[90 of the Code](#), an arrest warrant would have to be issued to give a court jurisdiction to consider such a case. A bench warrant would not suffice as a charging document.

CONCLUSION:

A bench warrant issued by a magistrate is not required to be in the form prescribed by the Attorney General pursuant to [Section 17-13-160 of the 1976 Code](#) of Laws and adopted by the South Carolina Supreme Court by Order dated August 25, 1978.

Charles H. Richardson  
Assistant Attorney General

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