

1975 WL 28929 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 16, 1975

*1 Honorable James A. K. Roper
The Family Court of Greenville
Post Office Box 757
Greenville, South Carolina 29602

Dear Judge Roper:

You have requested an opinion from this Office as to whether a bench warrant issued by a judge of the Family Court is subject to recently enacted Section 43-111.1, Code of Laws of South Carolina (1962) (R-122 of 1975, approved April 9, 1975), which provides:

'When any person is arrested in a criminal matter pursuant to an arrest warrant, the person so arrested shall be furnished with a copy of such warrant and the affidavit upon which the warrant was issued.'

The above Section follows Section 43-111, which requires all proceedings before magistrates in criminal cases to commence on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue.

A bench warrant is clearly distinguishable from the warrants of arrest referred to in Sections 43-111 and 43-111.1. These Sections pertain to the procedure in a magistrate's court for issuance of an arrest warrant upon a showing to the satisfaction of the magistrate of probable cause in criminal cases. A bench warrant, on the other hand, has been described as follows:

'Process issued by the court itself, or 'from the bench', for the attachment or arrest of a person; either in case of contempt, or where an indictment has been found, or to bring in a witness who does not obey the subpoena. So called to distinguish it from a warrant, issued by a justice of the peace, alderman, or commissioner.' [Oxford v. Berry](#), 204 Mich. 197, 170 N.W. 83. (Emphasis added).

In view of the clear distinction as set forth above between a bench warrant and an arrest warrant issued in accordance with provisions of Section 43-111, it is the opinion of this Office that Section 43-111.1 is limited in application to warrants issued pursuant to Section 43-111 upon a showing of probable cause and has no bearing upon bench warrants issued under the inherent authority of the courts.

Sincerely,

Raymond G. Halford
Assistant Attorney General

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