



HENRY McMASTER
ATTORNEY GENERAL

May 19, 2010

Timothy E. Meacham, University Counsel
Coastal Carolina University
P. O. Box 261954
Conway, South Carolina 29528-6054

Dear Mr. Meacham:

In a letter to this office you referenced the creation of an “overlay zone” related to residential housing which is more restrictive than the overall county ordinance and limits the number of residents staying overnight in a particular home. You indicated that magistrates have been reluctant to issue search warrants based upon the number of cars on a particular property.

Enclosed please find a copy of a prior opinion of this office responsive to your question. That opinion referenced S.C. Code Ann. § 17-13-140 which authorizes the issuance of a search warrant. The opinion stated that

[b]ased on a plain reading of section 17-13-140, we believe the Legislature intended to allow magistrates, recorders, and judges to issue warrants to search and seize five specific types of property. In comparing the five situations in which a warrant may be issued to the circumstances presented in your letter, we do not believe the inspection of dwelling units for purposes of enforcement of this ordinance falls under any of the five types of searches listed in section 17-13-140.

The opinion further commented that

[w]e also find it necessary to advise you that a warrant issued without proper authority violates the fourth amendment and is void as a matter of law. Furthermore, a law enforcement officer's execution of an invalid search warrant may subject the officer to liability. See Smoak v. Hal, 460 F.3d 768, 784 (6th Cir. 2006) (“Those present for an unconstitutional seizure can also be held liable for failure to protect.”).

Mr. Meacham
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With kind regards, I am,

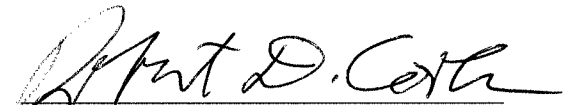
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General