

7283 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 10, 2002

Jeffrey B. Moore, Executive Director
South Carolina Sheriff's Association
P.O. Box 21428
Columbia, South Carolina 29221-1428

Re: Publishing Arrest Warrants

Dear Mr. Moore:

In a letter to this Office, you have questioned the constitutionality of publishing outstanding arrest warrants on the internet. By way of background, you indicate that a local sheriff has approached your association apparently expressing interest in posting unserved criminal arrest warrants on his office's web site. Specifically, you present the following question:

Is the publication of these [arrest] warrants constitutional, or must they be withheld from public scrutiny until they are successfully served on the individual?

The constitutional provision implicated by the publishing of the arrest warrants relates to the privacy rights of the parties involved. Article 1, Section 10 of the South Carolina Constitution provides that:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.

Our Supreme Court has held that, under South Carolina law, if a person, whether willingly or not, becomes an actor in an event of public or general interest, "then the publication of his connection with such an occurrence is not an invasion of his right to privacy." Doe v. Berkeley Publishers d/b/a The Berkeley Independent, 329 S.C. 412, 496 S.E.2d 636 (1998). It has also been long established as a general rule that reports of the investigations of crimes or matters pertaining to criminal activity have almost without exception been held to be newsworthy or matters of legitimate public interest as a matter of law.

In a previous opinion request, this Office was asked to comment on the propriety of a county sheriff posting, among other things, bad check warrants on the Internet. Based on the above

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principles and other authority, we stated that "the reporting of information, such as warrants, from a public record does not constitute an invasion of privacy or defamation [s]o long as a public official such as [the Sheriff] is reporting from public records in an accurate way, one which is not misleading" See OP. ATTY. GEN. (Dated February 22, 1996). Arrest warrants, once served, are generally public information in South Carolina. See OP. ATTY. GEN. (Dated January 24, 1990). Further, this Office has also opined that, as incident reports are specifically declared public information by the South Carolina Freedom of Information Act, the information contained therein does not lose its public status simply by transferring it to an arrest warrant. See OP. ATTY. GEN. (Dated April 4, 1983). As an arrest warrant which has been served is public information and the information which is the subject of the warrant is public information it makes no sense that the arrest warrant itself is banned from publication prior to service on the offender.¹

Attorneys General from other states considering similar issues have agreed. In considering the issue of a district attorney publishing or causing to be published in a newspaper the names of absent parents for whom warrants of arrest have been issued for failure to provide child support, the California Attorney General found the publishing proper and stated "we determine that absent parents who are the subjects of arrest warrants are not different from other wanted criminal defendants and that a district attorney's office may properly seek the assistance of the public in locating such persons[a] warrant of arrest is issued by a magistrate when a criminal complaint is presented and the magistrate is satisfied from the complaint that the offense has been committed and there is reasonable ground to believe that the defendant has committed it." See CAL. OP. ATTY. GEN. (Dated October 11, 1984).

In addressing a question from local law enforcement concerning publicizing the names of individuals with outstanding arrest warrants in the newspaper, the Attorney General for Louisiana opined that such violated neither that State's Public Records Law nor the right to privacy as provided for under the Louisiana Constitution. See LA. OP. ATTY. GEN. (Dated January 23, 1996). Similar in substance to Article I, §10 of South Carolina's Constitution, Louisiana's right to privacy in Article I, Section V of their Constitution is stated as follows:

Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.

¹ Of course, where appropriate, law enforcement may wish to forgo publication of certain information of this nature pursuant to S.C. Code Ann. §30-4-40.

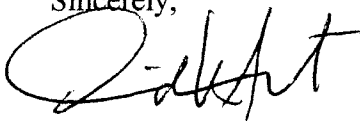
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In light of the above provision, the Louisiana Attorney General opined that "since a warrant of arrest would have been issued prior to publishing this information in the paper and a determination that probable cause exists would have occurred, an individual's right to privacy would not be violated." It is logical that the same conclusion be reached when interpreting South Carolina's Constitutional provisions regarding a person's right to privacy.

While not specifically mentioned in your letter, it is assumed for purposes of this opinion that the posting of the outstanding warrants on the Internet would be for the purpose of assisting the sheriff in locating the individuals charged therein. With that goal in mind and based on the foregoing, it is my opinion that the publishing of outstanding arrest warrants on the Internet would not violate an individual's right to privacy as provided for in the South Carolina Constitution.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Avant", written over the word "Sincerely,".

David K. Avant
Assistant Attorney General

DKA/an