



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

April 14, 2000

Sgt. Randall S. Creamer
Anderson County Sheriff's Office
Training Division
5737 Airport Road
Anderson, South Carolina 29626

Dear Sgt. Creamer,

Thank you for your letter requesting an opinion of this Office, which has been referred to me for a response. You have asked for an opinion on the authority of class 3 officers to detain suspects.

By way of background you provide the following information: You have had questions arise concerning situations in which class 3 officers, such as litter control or animal control officers, stop a vehicle for a violation and find that the driver is wanted for a warrant or is driving under suspension. Specifically you wish to know whether the officer can detain the suspect until a class 1 officer, or regular law enforcement, arrives. You also wish to know whether the officer may use force to hold the suspect if he wishes to leave.

South Carolina Code Annotated Section 4-9-145 authorizes the appointment of Code Enforcement Officers, or the class 3 officers to which you refer in your question. The Section provides:

The governing body of a county may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the county. These officers are vested with all the powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the county. However, no code enforcement officer commissioned under this section may perform a custodial arrest. These code enforcement officers shall exercise their powers on all private and public property within the county. The governing body of the county may limit the scope of a code enforcement officer's authority or the geographic area for which he is authorized to exercise the authority granted.

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Although you inform us that these officers carry firearms and handcuffs, the statute expressly states that "no code enforcement officer ... may perform a custodial arrest."

You ask whether the class 3 officer may detain the suspect until a class 1 officer arrives to take the suspect into custody. The United States Supreme Court has held that such a detention constitutes a seizure and is, therefore, subject to the same protection under the Fourth Amendment as that of an arrest. See Terry v. Ohio, 392 U.S. 1 (1968). Similarly, this Office has advised that the detention of an individual longer than necessary to issue the citation by a code enforcement officer would be unlawful. See Op. Atty. Gen. July 19, 1996. Thus, a class 3 officer, or an administrative code officer, is similarly without statutory authority to detain a suspect until another officer arrives because the detention, itself, is an arrest.

Although the administrative code officer has no statutory authority to perform an arrest, an officer may perform an arrest outside his authority if the arrest would be proper for any ordinary citizen. South Carolina Code Ann. §17-13-10 outlines the circumstances under which any person may arrest a felon or thief:

Upon (a) view of a felony committed, (b) certain information that a felony has been committed or (c) view of a larceny committed, any person may arrest the felon or thief and take him to a judge or magistrate, to be dealt with according to law.

Section 17-13-20 adds to these circumstances:

A citizen may arrest a person in the nighttime by efficient means as the darkness and the probability of escape render necessary, even if the life of the person should be taken, when the person:

- (a) has committed a felony;
- (b) has entered a dwelling house without express or implied permission;
- (c) has broken or is breaking into an outhouse with a view to plunder;
- (d) has in his possession stolen property; or
- (e) being under circumstances which raise just suspicion of his design to steal or to commit some felony, flees when he is hailed.

South Carolina courts have also recognized the common law authority of a warrantless citizen's arrest upon view of a misdemeanor involving a breach of peace. State v. McAteer, 333 S.C. 615, 511 S.E.2d 79 (1998) (per curiam) (holding driving under the influence a misdemeanor breach of the peace). However, we have been unable to locate any common law authority in South Carolina for a citizen to perform an arrest solely because of the existence of a warrant.

Thus, a code enforcement officer may detain a suspect, effectively performing a citizen's arrest,

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only under certain circumstances. The officer must actually view the misdemeanor breach of peace, felony, or larceny. In the absence of viewing these crimes, or in the absence of the circumstances required by S. C. Code § 17-13-20, the officer must have certain information that a felony has been committed.

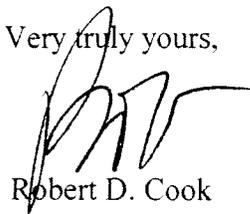
In the circumstances you describe, in which an officer learns the suspect has a warrant out for his arrest, the basis for the arrest warrant is critical. If the warrant is for a misdemeanor, the officer would have no common law authority to perform the citizen's arrest. If the warrant is for a felony charge, it is the opinion of this Office that the officer would have "certain information" that a felony has been committed and may detain the suspect. We are unaware of any case law in South Carolina that has addressed this question. In State v. Shaw, 109 S.C. 359, 89 S.E. 359 (1916), the Supreme Court of South Carolina upheld an officer's arrest of a suspect for a misdemeanor even though the officer did not have the warrant in hand. Similarly, in State v. Grate, 310 S.C. 240, 423 S.E.2d 119 (1992), the Court held that an officer's arrest of the suspect after radioing in and learning of an outstanding misdemeanor warrant was lawful. In both of these cases, however, the officers had full custodial arrest authority and are easily distinguishable from a code enforcement officer.

Because the law is unsettled in this area, we cannot opine, with any high degree of confidence, that a detention by a code enforcement officer based on an outstanding warrant for a felony would absolutely insulate the officer from liability. The code enforcement officer has no statutory authority to detain the suspect. His actions would only be protected as that of an ordinary citizen performing a citizen's arrest. As a matter of precaution, we would generally recommend against an administrative code officer's performing an arrest. A preferable course of action would be to notify immediately an appropriate law enforcement officer of the suspect's location to enable that officer to perform the arrest.

This letter is an informal opinion only. It has been written by a designated Senior 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 nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General