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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 13, 2000

James A. Preacher, Chief of Police
Norway Police Department
Post Office Box 127
Norway, South Carolina 29113

Dear Chief Preacher:

In a letter to this office you questioned whether a magistrate may refuse to issue a warrant in a situation where a victim has provided a sworn affidavit alleging that a crime has been committed. You further indicated that in such situation there is also a police report and an investigation has been made indicating a crime has been committed.

Any decision as to whether or not to issue a warrant rests in the discretion of the magistrate considering the matter who must make a decision as to whether probable cause has been shown. See: S.C. Bench Book, Section III. The magistrate must make an independent judicial determination as to probable cause based upon the information provided by any witnesses under oath. Such is consistent with S.C. Code Ann. Section 22-3-710 (1989) which states that "(a)ll proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue."

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents no 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 matter of a formal opinion.

With kind regards, I am,

Very truly yours,

Charles H. Richardson
Senior Assistant Attorney General

kws