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The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLIE CONDON  
ATTORNEY GENERAL

July 18, 2001

The Honorable William H. Womble, Jr.  
South Carolina Summary Court  
Chief Judge, Richland County  
2712 Middleburg Drive  
Middleburg Plaza, Suite 106  
Columbia, South Carolina 29204

**Re: Your Letter of May 29, 2001**  
**S.C. Code Ann. §§34-11-60, 70 & 22-3-750**

Dear Judge Womble:

In your above-referenced letter, you request an opinion from this Office concerning the application of S.C. Code Ann. §§34-11-60 & 70 (Drawing and Uttering Fraudulent Checks, etc.) when the check involved is written on a corporate account. By way of background, you present the following:

Recently one of the magistrates here, in Richland County issued a fraudulent check arrest warrant under the 34-11-60 section of state law. The arrest warrant was issued against an individual ... . The check was returned as NSF ... . The arrest warrant was issued against ... the party issuing the check. The required letter under 34-11-70 was addressed to [the individual at his business address]. Before issuing the affiant stated he knew the defendant by name and sight and [that] he in fact issued the fraudulent check.

After the arrest warrant was issued it was sent to Lexington County through the Richland County sheriff for service. The Lexington County Sheriff, through some kind of pre-service review program in accordance with their departmental policy, has refused to arrest and serve the named defendant because the account holder is a corporation.

... the Lexington County sheriff's department refuses to serve the warrant because in their opinion the magistrate ... erred in using the individual's name, but instead should have followed the procedure in 22-3-750 procedure against corporations for

*Robert L. ...*

violating criminal law. The Lexington County Sheriff returned the arrest warrant unserved to the issuing magistrate.

Specifically, you set forth the following questions:

1. Can an individual open a checking account where the account holder is a small or large corporation and have protection from arrest for knowingly issuing a fraudulent check?
2. Does that arrest warrant have to be issued in the name of that corporation? If so, how is that arrest warrant served across county lines? What would be the procedure if the account holder did not designate the business status? For example the account holder was titled [business] .
3. It is appropriate for a sheriff's office to refuse service of an arrest warrant under the circumstance described above.

#### Questions 1 & 2

Section 34-11-60(a) criminalizes the making and uttering of fraudulent checks and provides:

It is unlawful for a person, with intent to defraud, in his own name or in any other capacity, to draw, make, utter, issue, or deliver to another a check, draft, or other written order on a bank or depository for the payment of money or its equivalent, whether given to pay rent, make a payment on a lease, obtain money, services, credit, or property of any kind or nature whatever, or anything of value which includes an obligation or debt of state taxes which is past due or presently due, when at the time of drawing, making, uttering, issuing, or delivering the check or draft or other written order the maker or drawer does not have an account in the bank or depository or does not have sufficient funds on deposit with the bank or depository to pay the same on presentation, or if the check, draft, or other written order has an incorrect or insufficient signature on it to be paid upon presentation. (Emphasis added).

The general law in this State is that “[a]n officer or an agent cannot shield himself from criminal responsibility for his own acts on the ground that they were done in his official capacity as an officer or an agent of such corporation.” State v. Hill, 286 S.C. 283, 33 S.E.2d 789 (1985)(citing; Thompson v. State, 69 S.E.2d 206 (Ga.App. 1952). More specifically, the general law in this country is that “where a corporate officer issues a worthless check in the corporate name he may be held personally liable for violating a penal statute imposing criminal penalties on anyone who [with intent to defraud] issues a check on any bank with knowledge that he has not sufficient funds in such bank to meet the check on presentment.” 68 ALR2d 1269. See also Parish v. State, 342 S.E.2d 360

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(Ga.App. 1986)(Corporate officer could be held criminally liable for issuing bad check, even though check was issued by corporation on corporate account, rather than by officer as an individual).

Nothing in the language of §34-11-60 makes the statute inapplicable to checks drawn on corporate accounts. In fact, the Section makes it unlawful to draft a fraudulent check in ANY capacity. Accordingly, the general law that individuals may be held criminally liable for acts done as an officer or agent of a corporation would appear to apply to violations of Section 34-11-60. Further, Section 22-3-750 is applicable only when the warrant is issued in the name of the corporation. The section would not be applicable when an individual is charged criminally for acts done as an officer or agent of the corporation.

Therefore, the answers to your questions would be: 1) No, an individual does not have protection from arrest for knowingly issuing a fraudulent check where the account holder is a small or large corporation; and, 2) The arrest warrant does not have to be issued in the name of the corporation.

### Question 3

Section 23-15-40 provides, in pertinent part:

The sheriff or his regular deputy, on the delivery thereof to him, shall serve, execute and return every process, rule, order or notice issued by any court of record in this State or by other competent authority.

While not a court of record, a magistrate's court is deemed to be "other competent authority" referenced in §23-15-40. See OP. ATTY. GEN. (Dated, December 18, 1990). Service of an arrest warrant is ministerial in nature and, as stated by our Supreme Court in Rogers v. Marlboro County, 32 S.C. 555, 558, 11 S.E. 383 (1890), with respect to the Sheriff the general rule which must be followed by peace officers is:

[w]hen a warrant is placed in his hands by proper authority, his duty is to execute it, or attempt to do so. It is no part of his duty to inquire whether the prosecution is well founded, either in law or fact, and it would be impertinent in him to do so ....

The sheriff is a ministerial officer. He is neither judge nor lawyer. It is not his duty to supervise and correct judicial proceedings; but being an officer of court, ministerial in character, he cannot impugn its authority or inquire into the regularity of its proceedings. His duty is to obey. This principle applies alike to him, whether the execution issues from a court of general or limited jurisdiction.

Given the above authority, this Office has consistently opined that, presuming an arrest warrant is valid on its face, a peace officer, such as a sheriff, possesses no discretion to refuse to

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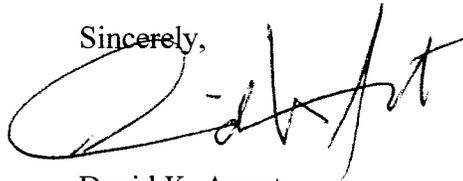
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serve and execute the warrant. See for example OPS. ATTY. GEN. (Dated April 18, 1995 & July 11, 1997). In addition, we stated in the July 11, 1997 opinion that the refusal to serve such a warrant may potentially subject the peace officer to contempt of court.

Accordingly, the answer to your third question would be: No, it is not appropriate for a sheriff to refuse to serve an arrest warrant which is valid on its face.

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