

1984 S.C. Op. Atty. Gen. 18 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-3, 1984 WL 159812

Office of the Attorney General

State of South Carolina

Opinion No. 84-3

**January 16, 1984**

**\*1 RE: Campus Security, Opinion #455**

Mr. Norman A. Allen, III  
Chief of Public Safety  
Trident Technical College  
Post Office Box 10367  
Charleston, South Carolina 29411

Dear Mr. Allen:

Attorney General Medlock has referred your letter dated August 16, 1983, to me for reply.

In response to your fact situation, my inquiries at institutions of higher learning in the Columbia area, together with my experience in criminal defense at the University of South Carolina, indicate a 'working relationship' between campus police and outside law enforcement authorities.

Generally, in most misdemeanor and non-violent crimes, Officers contact the head of campus security, who then sends one of his employees to escort the student to the campus police office where the warrant is served. Confrontation is avoided to keep the peace and order more than out of legal necessity. If a student is in class, campus officers either wait until the class is over, or go with a representative of the Dean of Students Office to escort the student from class. Of course, in cases of felonies, violent crimes, or situations where the student might attempt to escape, more traditional law enforcement measures are taken. The outside Officer may accompany the campus police to a classroom, or the classroom may be staked out with officers at opposite ends of the hall.

But it should be noted that these measures are, as described on the first page of your letter, take out of courtesy. Efforts are made to avoid confrontation between students, staff, and armed, uniformed Officers, and to lessen embarrassment to the individual student or staff member. There is no legal requirement that these courtesies be adhered to; this office is unaware of any statute or ruling that would prohibit the lawful arrest of a student (or staff or faculty member) by an outside Officer with a warrant, solely because the student is attending school.

Accordingly, your individual questions may be listed and answered as follows:

- a. Does the Officer have the legal duty and right to serve warrants on college campuses? Yes, provided he has jurisdiction within the county. See, e.g., [§ 23-15-50, Code of Laws of South Carolina \(1976\)](#), a copy of which is enclosed. In addition, under certain circumstances an Officer may arrest within three miles of his city limit when in fresh pursuit of an offender. See, [§ 17-13-40, Code of Laws](#); a copy of which is also enclosed.
- b. Does the Officer have to notify the college administration of his intention to serve the warrant, or is that a matter of courtesy? The Officer does not have to notify the administration of his intention to serve the warrant.
- c. Must the Officer serve the warrant on the subject or should he consider the administration's insistence on notifying the student as hindering or delaying in the execution of the warrant? The Officer may serve the warrant on the subject. He is not required to wait until the administration notifies the student. As a practical matter, however, Officers often need the assistance of the

administration in locating the student. Whether the administration's 'insistence' would be a violation of [§ 16-5-50 of the Code](#) would depend upon the facts of each case. Factors to be considered would include the degree of hinderance, the seriousness of the crime involved, and the possibility of escape.

\*2 A violation of [§ 16-5-50](#) requires either of **four** types of conduct:

1. Hinder, prevent or obstruct an Officer from executing a warrant and arresting a person;
2. Rescue or attempt to rescue a person from the custody of the Officer;
3. Aid, abet or assist an arrested person to escape; or
- 4.** Harbor or conceal any person for whose arrest a warrant has been issued, with knowledge of the warrant's existence.

A copy of that statute is enclosed. It is certainly possible, depending upon the facts of the case, for direct action by campus officials to fall within the conduct proscribed by [§ 16-5-50](#).

The common law crime of obstruction of justice involves the following conduct: Resisting or obstructing an Officer in the performance of an official duty, including, but not limited to the execution of an arrest warrant. 67 C.J.S. 'Obstructing Justice' § 5. An Officer is legally authorized to execute a warrant regular and complete on its face, issued by a judge having jurisdiction over the matter, even if issued without proper grounds. The Officer must have jurisdiction to make the arrest within the county. Perkins, Criminal Law (2d Ed., 1969) 487; [State v. Hollman](#), 232 S.C. 491, 102 S.E.2d 873 (1958). Again, whether the administration's conduct would fit the above definition would depend upon the facts of each case.

d. As a South Carolina public safety Officer, commissioned by SLED to enforce laws on state property, would you constitute a representative of the college, or does someone (non-police) need to be involved? As a SLED commissioned Officer, you may represent the college in coordinating the execution of an arrest warrant.

e. Would a student have any right to claim immunity from prosecution (in class) and refuse to submit to an arrest as violation of his student rights (paid for education)? A student does not have immunity from arrest, as discussed above.

f. If a member of the college staff notifies the student of the Officer's intention and the student flees, is that person subject to arrest for [§ 16-5-50](#)? That person may be prosecuted under [§ 16-5-50\(a\)](#). 'Interference' with a police Officer has been said to import action, not mere inaction, an active rather than a passive condition, and has been defined as 'meaning to interpose, to prevent some action, sometimes in a bad sense to intermeddle, to check or hamper, and specifically to do something which hinders or prevents or tends to prevent the performance of the legal duty. In its broadest aspects 'interfere' bears the significance of disarrange, disturb, and hinder'. [City of Charleston v. Mitchell](#), 239 S.C. 276, 123 S.E.2d 512 (1961). Certainly, conduct as you described would prevent the arrest, and could fall within the common law definition of obstruction of justice. To fall within the definitions of [§ 16-5-50\(a\)](#), it would appear that knowledge or notice of the warrant's existence would be required for the crime to be complete.

g. How long does an Officer have to wait for assistance in the service of process before he declares hinderance or delay and proceeds on his own? As stated above, the Officer is not required to wait for assistance in service of an arrest warrant. Many do, out of courtesy or through working relationships their agencies have with campus security personnel.

\*3 h. May the Officer present the arrest warrant and demand information on the student, such as address or location on campus? The answer to this question is difficult to ascertain, as two types of authority could lead to two answers, depending upon the circumstances presented. One viewpoint, based upon [United States v. Underwood](#), 34 Cr.L.Rep. 2064 (9th Cir. 1983) and [Payton v. New York](#), 445 U.S. 573 (1980), would conclude that the Officer may present the arrest warrant and make a search for the student. Such a search could reasonably include a demand for records of the student's location (e.g. dormitory

address, or classroom). A search warrant would not be needed in addition to the arrest warrant; if, however, the Officer has a search warrant, then the question would be moot.

The Family Educational Rights and Privacy Act of 1974, [20 U.S.C. § 1232g](#), should also be considered when a decision is to be made concerning disclosure of certain student records. Information concerning a student's location on campus is not part of those records excepted from the Act. However, an exception exists for release of records when an emergency situation exists. Factors to be used in determining whether an emergency situation exists are listed in [34 C.F.R. § 99.36](#) and include:

- (1) The seriousness of the threat to the health or safety of the student or other individuals;
- (2) The need for the information to meet the emergency;
- (3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and
- (4) The extent to which time is of the essence in dealing with the emergency.

Whether an emergency exists would be determined on a case-by-case basis, using these factors. It is possible that a non-emergency situation may exist, whereby information on a student is given to an Officer with an arrest warrant, resulting in violation of the Act. Thus, the answer to your question would depend upon the facts. This Office can only point out the factors to consider, as the final determination of the issue would necessarily be made by the courts.

i. Does the presence of a police Officer with a warrant constitute an emergency situation? It is not possible from your letter to determine whether or not the presence of an Officer with a warrant constitutes an emergency situation. If you address the authority of the Officer to execute the warrant, please refer to question (a) above. You may also wish to consider [34 C.F.R. 99.36](#) as to when an emergency situation would exist under the Family Educational Rights and Privacy Act of 1974; the presence of the Officer, by itself, would not constitute an emergency situation.

j. If the Officer is serving a legal warrant, does he have the right to interrupt a class, and if another student or teacher interferes, is that person also subject to prosecution under [§ 16-5-50](#)? An Officer may interrupt a class to arrest a student. There is no legal prohibition from his doing so. As stated above, most Officers, out of courtesy and to avoid confrontations, work through campus security in misdemeanor and non-violent cases, and do not interrupt classes. Interference by a student or a teacher in an arrest could be a violation of [§ 16-5-50](#) or common law obstruction of justice. See, questions (c) and (f) above.

\*4 k. If a Public Safety Officer was instructed by college administration not to assist the Officer in execution of the process, could he face prosecution under [§ 16-5-40](#)? Under the reasoning above, your Officers are not required to assist in the execution of a warrant. Nor is the outside Officer required to seek their assistance. It is difficult to imagine an administration ordering campus officials (police or otherwise) not to assist an Officer in execution of an arrest warrant. But if campus officials willfully refuse to provide information on a student's location, they could be held to have violated [§ 16-5-50\(a\)](#), by their hinderance of the Officer, or (c), by concealing the student. The facts and circumstances of each case would govern; it is not possible to make an accurate prediction on the legal consequences of such conduct based upon the information in your letter.

l. Should a student be injured in an arrest by an outside Officer, is Trident Technical College liable in any way? The liability of your college for injury of a student under such circumstances may be best determined by consulting your insurance carrier. Too many factors are involved, such as the reasonableness of the force used, for me to make a general conclusion regarding liability.

I trust this information has been of some assistance. In addition, my inquiries caused me to learn of the existence of a state organization of campus security agencies. I had not been aware of its existence, nor do I know if you are a member. It is my understanding from Carl Stokes, Vice President in charge of public safety at U.S.C., that this organization meets periodically to discuss issues such as the ones framed in your letter.

Sincerely yours,

James G. Bogle  
Assistant Attorney General

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