

1979 WL 42792 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 1, 1979

*1 Mr. Neal Forney
Assistant Director
South Carolina Court Administration
Post Office Box 11788
Columbia, South Carolina 29221

Dear Neal:

In a recent letter to this Office, you asked.

Can an arrest warrant be issued for a defendant who violates the conditions imposed pursuant to the provisions of [Section 17-15-10 et seq. of the 1976 Code](#) of Laws?

A letter dated January 12, 1979 from myself written in response to such question quoted an earlier opinion from this Office and stated in part:

‘ . . . if the defendant having been released on bond pursuant to [Section 17-15-10](#) through [17-15-100](#) . . . was charged with failing to appear before the court as required, pursuant to [Section 17-15-90 of the Code](#), as arrest warrant would have to be issued to give a court jurisdiction to consider such a case.’

This referenced statement was included in an opinion written in response to your question as to whether a bench warrant is required to be in the form of the arrest warrant recently approved by this Office. You have recently indicated, however, that there is some question as to whether an individual released pursuant to [Sections 17-15-10, et. seq.](#), who willfully fails to appear before a court as directed may be considered to have committed a crime. Please be advised that in [State v. Parker, 227 S.E. 2d 677 \(1976\)](#) the South Carolina Supreme Court was faced with the question of whether the section now codified as [Section 17-15-90](#) states a crime or should be construed as a ‘condition subsequent to the accused’s failure to perform the terms of the contract of recognizance.’ The Court in [Parker](#) stated specifically that:

‘It is our opinion that Section 17-300.8 . . . [now codified as [Section 17-15-90](#)] . . . creates a substantive crime independent of contempt and, therefore, in prosecutions under it, all requisite constitutional guaranties must be observed.’ [227 S.E. 2d at 680.](#)

The Court further indicated that a case brought pursuant to such statute is properly initiated by indictment by a grand jury.

Hopefully this clarifies those questions in regard to [Section 17-15-90.](#)

Sincerely,

Charles H. Richardson
Assistant Attorney General

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