

1979 WL 42833 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 1, 1979

*1 Harry B. Burchstead, Jr., Esquire
Assistant Solicitor
Third Judicial Circuit
Sumter County Courthouse
Sumter, South Carolina 29150

Dear Solicitor Burchstead:

You have inquired as to what showing a police officer must make to a magistrate to establish the reliability of a dog specially trained in the detection of marijuana in order to obtain a search warrant when the sole probable cause is based on the dog's detection ability. While there are no South Carolina cases discussing this issue, cases collected at [31 A.L.R. Fed. 931](#) (Annotation discussing whether search predicated on 'information' supplied by a canine is violative of the Fourth Amendment) indicate that where the dog reacts in the manner in which it was trained—thereby signifying that the dog detects marijuana, e.g. coming to the 'alert' position, biting, scratching, barking, or other such signal, and where there is other evidence to indicate the reliability of the dog—the magistrate would be justified in finding probable cause. Some examples of the other evidence necessary to establish the reliability of the dog are:

The number of times the dog has accurately alerted in either his training periods or on the job;

Evidence that a dog's sense of smell is eight times more acute than a human's;

That the dog had never mistakenly reacted to objects not containing the drug which it was trained to detect;

The number of arrests/convictions obtained with the aid of this particular canine; and

The general description of the thoroughness and the type of training which the dog had received.

It is the opinion of this Office that an 'alert' by the dog, plus a description of the type training the dog has had and any of the 'other evidence' of reliability, would be sufficient to justify a finding of probable cause by a magistrate. [See [People v. Furman](#), 30 Cal. App. 3d 454, 106 Cal. Rep. 366 (1973); [U.S. v. Solis](#), 536 F. 2d 880 (C.A. 9, 1976)].

Your second question involves whether a student who is assigned a school locker enjoys a reasonable expectation of privacy in that locker so as to require the issuance of a search warrant. Enclosed please find a recent opinion of this Office and an A.L.R. Annotation which, I believe, cover the subject adequately.

Should you require additional assistance of this Office, please do not hesitate to call.

With warmest personal regards, I am
Sincerely,

Buford S. Mabry, Jr.
Staff Attorney

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