



ALAN WILSON
ATTORNEY GENERAL

November 19, 2025

Jordan S. Thayer, Esquire
Assistant Anderson County Attorney
PO Box 8002
Anderson, SC 29622-8002

Dear Mr. Thayer:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. You ask the following questions related to code enforcement in your county:

1. Does South Carolina Code of Laws of 1976, as amended, section 31-15-380(3) allow a magistrate to authorize an administrative search warrant?
2. May a magistrate issue an administrative search warrant under section 31-15-380 if the affiant is a code enforcement officer who is not a certified constable and who is not acting under a class 3 certification from the state law enforcement division?
3. May a county code enforcement officer prosecute their case in magistrate's court?

It is the opinion of this office that Section 31-15-380(3) does not authorize issuance of an administrative warrant. As for prosecution of code enforcement cases, we believe a county code enforcement officer may prosecute their cases in magistrate's court.

Law/Analysis

You first ask whether Section 31-15-380 authorizes a magistrate to issue an administrative search warrant. Counties are authorized to regulate dwellings unfit for human habitation by South Carolina Code Sections 31-15-310 to -400. Of note, Section 31-15-350 offers standards for determining fitness of a dwelling, and Section 31-15-330 details the process for determining whether a dwelling is unfit and permits counties to appoint or designate a public officer to oversee enforcement of the relevant ordinances. The process begins when the public officer receives a complaint or decides on their own motion that a preliminary investigation is warranted. S.C. Code Ann. § 31-15-330 (Rev. 2007). Ultimately, the owner of an unfit property can be ordered to take remedial action ranging from repair to demolition or removal of the dwelling and if the owner does not comply, the public officer can cause the remedial action to be taken and impose a lien against the property for the costs. Id. Section 31-15-380, the statute in question, provides:

An ordinance adopted by the county governing body may authorize a public officer to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

- (1) To investigate the dwelling conditions in the county in order to determine which dwellings therein are unfit for human habitation;
- (2) To administer oaths and affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises for the purpose of making examinations, provided such entries be made in such manner as to cause the least possible inconvenience to the persons in possession;**
- (4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of the ordinances; and
- (5) To delegate any of his functions and powers under the ordinances to such officers and agents as he may designate.

S.C. Code Ann. § 31-15-380 (Rev. 2007) (Emphasis added).

You contend the law “clearly allows entry, even if it is inconvenient to the persons in possession.” You then submit: “[f]ollowing the traditional Fourth Amendment analysis that a search without a warrant is unreasonable, it is unlikely that this statute gives the government the authority to enter without a search warrant. A reasonable conclusion is that the statute grants administrative search warrant powers.” We do not share this conclusion.

The Fourth Amendment to the United States Constitution Counties protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” and provides that no warrants shall be issued unless they are based on probable cause “supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. The Fourth Amendment is enforceable against the states through the Due Process Clause of the Fourteenth Amendment. Mapp v. Ohio, 367 U.S. 643, 650-51 (1961); State v. Woodruff, 344 S.C. 537, 544, 544 S.E.2d 290, 294 (Ct. App. 2001). Article I, Section 10 of the South Carolina Constitution provides the same guarantees as the Fourth Amendment, but also contains language expressly guarding against unreasonable invasions of privacy and requiring that a warrant particularly describe the information to be obtained. S.C. Const. art. I, § 10. Reasonableness is the touchstone of the Fourth Amendment. State v. Jones, 435 S.C. 138, 145, 866 S.E.2d 558, 562 (2021) (citing Florida v. Jimeno, 500 U.S. 248 (1991)). With several well-recognized exceptions, a warrantless search is generally deemed per se unreasonable. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007).

In Camara v. Municipal Court of the City and County of San Francisco, the Supreme Court of the United States considered whether nonconsensual administrative searches require a search warrant. 387 U.S. 523 (1967). The case arose from attempts by local authorities to enter a leased

first floor of an apartment building to inspect for possible violations of the local housing code and criminal charges against the lessee for refusing warrantless entry. Inspectors were attempting to enter the space based on information that the lessee was using a portion of it in violation of the housing code. Revisiting prior precedent, the Court held that “administrative searches of the kind at issue here are significant intrusions upon the interests protected by the Fourth Amendment” and “that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual.” *Id.* at 534. However, the Court acknowledged that the test for probable cause “can take into account the nature of the search that is being sought” and noted the facts supporting probable cause for an administrative search are “clearly different” from those that would justify probable cause in a criminal investigation. *Id.* at 538. Recognizing that reasonableness is the ultimate standard, the Court concluded “[i]f a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted [administrative] search warrant.” *Id.* at 539. Put another way, probable cause “must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling.” *Id.* at 538. Because a warrant must specify the property to be searched, the Court reasoned that as a practical matter, “it seems likely that warrants should normally be sought only after entry is refused unless there has been a citizen complaint or there is other satisfactory reason for securing immediate entry.” *Id.* at 539-40.

This office has issued several opinions regarding administrative warrants since the decisions of Camara and its companion case of See v. City of Seattle.¹ In an opinion regarding search warrants for health or safety inspections, we advised that the existing statutes authorizing search warrants probably did not cover administrative warrants for health and safety inspections and additional legislation would be needed to authorize South Carolina courts to issue the same. Op. S.C. Att’y Gen., 1967 WL 12046 (August 16, 1967). We have also twice raised concerns about the constitutionality of pending bills because the proposed legislation permitted entry into a dwelling or premises without a warrant or emergency. Op. S.C. Att’y Gen., 1975 WL 29688 (April 10, 1975); Op. S.C. Att’y Gen., 2019 WL 1644924 (February 27, 2019).

The question of statutory authority to issue administrative warrants was discussed more fully in this office’s December 15, 2005, opinion in which we addressed whether search warrants could be issued for inspection of residences for potential violations of a city ordinance. Op. S.C. Att’y Gen., 2006 WL 3877512 (December 15, 2006). The ordinance in question provided that no more than three unrelated persons could live together in one residence. *Id.* at *1. On the topic of statutory authority for search warrants, the opinion stated:

South Carolina courts, as well as courts of other jurisdictions, require specific statutory authority for judges and magistrates to issue search warrants. In State v. Baker, 251 S.C. 108, 109, 160 S.E.2d 556, 556-57 (1968), the South Carolina Supreme Court noted: “There is no common law right to issue search warrants. The

¹ 387 U.S. 541.

issuing authority is subject to the constitutional prohibition against unreasonable searches and seizures as set forth in the fourth amendment to the Constitution of the United States, and subject to statutory control.” (emphasis added). Other jurisdictions’ courts follow the same reasoning. For instance, the Supreme Court of Washington has consistently held “municipal courts have no inherent authority to issue administrative search warrants, they must rely on an authorizing statute or court rule.” City of Seattle v. McCready, 877 P.2d 686, 691 (Wash. 1994). See also, City of Seattle v. McCready, 868 P.2d 134, 141 (Wash. 1994) (“There is... no general common law right to issue search warrants.”). The courts of Delaware, Iowa, and Kentucky also reached this conclusion. Matter of Brookview Assoc. Petition for A Writ of Prohibition, 506 A.2d 569, 570 (Del. Super. Ct. 1986) (“Justice of the Peace Court only has such jurisdiction as is expressly conferred upon it by statute.”); Fisher v. Sedgwick In and For Story County, 364 N.W.2d 183 (Iowa 1985) (finding in the absence of statutory authority a court does not have warrant authority); Stovall v. A.O. Smith Corp., 676 S.W.2d 475, 476 (Ky. Ct. App. 1984) (finding the Commissioner of Labor did not have the right of entry under common law and “the courts had no parallel authority to issue administrative search warrants.”); State v. Peterson, 194 P. 342, 351 (Wyo. 1920) (“[T]he powers of a justice of the peace are strictly limited to what is conferred upon him by statute.”).

Id. at *2. The opinion reviewed the South Carolina Code Section 17-13-140, which authorizes issuance of warrants for the search and seizure of property related to criminal activity, and concluded it did not allow for warrants to inspect dwellings for zoning violations. Id. at 3. The opinion noted that our code contains several statutes that authorize the issuance of administrative search warrants but that a review of the code did not reveal any statutory authorization for a magistrate or judge to issue an administrative search warrant for the enforcement of zoning ordinances leaving this office with the presumption “the Legislature did not intend for such authority to exist.” Id. at 4.

Turning back to the statute at hand, we note it contains no language authorizing issuance of an administrative warrant by a magistrate, or by any court or judicial officer for that matter. In fact, the statute contains no reference to warrants at all. The primary rule of statutory construction is to determine and give effect to the legislature’s intent. Creswick v. Univ. of S.C., 434 S.C. 77, 81, 862 S.E.2d 706, 708 (2021). Where possible, a court will rely on a statute’s plain language to ascertain legislative intent. State v. Taylor, 436 S.C. 28, 870 S.E.2d 168 (2022). Like a court, we will not add words to a statute to make it fit a desired meaning. Op. S.C. Att’y Gen., 2025 WL 1716482 (June 11, 2025) (quoting Kinard v. Moore, 220 S.C. 376, 68 S.E.2d 321 (1951)). To read warrant authorization into a statute where it does not exist would usurp the province of the legislature. We do not believe a court would add the desired language to the statute and we will not attempt to do so. Of course, if local officials need administrative search warrants to effectively regulate unfit dwellings, our General Assembly can provide that authority.

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Because we do not believe Section 31-15-380 authorizes the issuance of administrative search warrants, we do not answer your second question. However, if the General Assembly sees fit to add authorization for administrative warrants to the statutory scheme regarding unfit dwellings, it may prove useful for your office and other similarly situated offices to offer input with drafting to ensure the resulting legislation establishes a clear and workable process.

Finally, it is the opinion of this office that code enforcement officers may prosecute their own cases in magistrate's court as discussed in the enclosed opinion issued to Senator Grooms earlier this year. Op. S.C. Att'y Gen., 2025 WL 2147589 (July 22, 2025). However, we remind you that our opinions are advisory and encourage any local government desiring certainty on this issue to seek the opinion of the Supreme Court of South Carolina as it holds exclusive authority to determine what constitutes the unauthorized practice of law.

Conclusion

It is the opinion of this office that Section 31-15-380 of the South Carolina Code does not authorize administrative search warrants. If search warrants are needed to support county ordinances related to the fitness of dwellings for human habitation, additional legislation will be necessary. We also are of the opinion that code enforcement officers may prosecute their own cases in magistrate's court.

Sincerely,



Sabrina C. Todd
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General Emeritus