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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

August 17, 2004

Larry W. Powers, Jail Director  
Spartanburg County Detention Center  
950 California Avenue  
Spartanburg, South Carolina 29303-2184

Dear Mr. Powers:

In a letter to this office you referenced the situation where law enforcement officers are arresting and transporting individuals to jail based upon information that the person is wanted in another jurisdiction where no warrant is in the officer's possession. The jail is then asked to hold the individual up to forty-eight hours and, in some cases, longer until someone can get to the jail to pick the individual up. You referenced that a problem exists where there is the lack of an arrest warrant and there is the requirement that an individual admitted to jail appear at a bail bond hearing. You indicated that there are typically two bail bond hearings scheduled each day but the individual cannot appear because there is no arrest warrant.

You also referenced that under NCIC guidelines, an officer may detain a person until they confirm a hit, usually ten minutes, and the jail may hold the person up to one hour to confirm that the hit is valid. In such instances, under NCIC rules, the requesting agency must have a staffed position 24 hours per day that can confirm that a "want" is still valid. You indicated that most of these situations involve out of state offenses and the arresting officer obtains a fugitive warrant which allows the jail staff to take the offender before a magistrate who then sets bond where appropriate. However, you indicated that you have run into problems involving the State Department of Probation, Parole and Pardon Services. Each of its offices maintain its own "warrant files" and only the information that a warrant exists is sent to Central Records at the State Department of Corrections whose staff places the information into the NCIC computer system. When a hit occurs, the individual at Central Records confirms the hit. However, the warrant could have already been served and the computer system has not "caught up" with the result that the individual is arrested twice for the same offense. You indicate that as a result, your jail has adopted a policy whereby if the probation office sends a faxed copy of the warrant with the confirmation that an agent is enroute to serve the original warrant, or in the event that is an out of county warrant, that they are enroute to pick the individual up, then the jail will hold the individual a reasonable period of time. Otherwise, if neither situation can be confirmed, then the individual will be released provided there are no other valid charges holding him. You indicate that these situations have left some "hard feelings" with other agencies.

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You indicated that it is your understanding that if an individual is arrested in good faith, the arresting officer is shielded from liability. However, you indicate that it is also your understanding that the individual holding the person arrested is responsible for any unreasonable delays in taking the arrested person before a court and for any subsequent false imprisonment claims. As outlined above, your apparent concerns deal with situations where no warrant is available and where you expected to hold an individual even though the warrant is not available.

As determined by the State Court of Appeals in Gist v. Berkeley County Sheriff's Department, 336 S.C. 611, 521 S.E.2d 163 (Ct.App. 1999), false imprisonment is "...deprivation of a person's liberty without justification." See also: Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990). As further determined by the Court in Gist, supra:

In order to prevail on a claim of false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff; (2) the restraint was intentional, and (3) the restraint was unlawful... False imprisonment is an intentional tort; negligence is not an element.

521 S.E.2d 163, 167. A prior opinion of this office dated September 8, 1980 indicated that "a person who is neither active himself in the commission of the false imprisonment...nor responsible for the acts of others who are active in the commission of the tort is not liable for a false imprisonment."

Generally, pursuant to S.C. Code Ann. Section 22-5-510 (Supp. 2003), "a person charged with a bailable offense must have a bond hearing within twenty-four hours of his arrest and must be released within a reasonable time, not to exceed four hours, after the bond is delivered to the incarcerating facility." As stated at 32 Am.Jur.2d False Imprisonment Section 31, "(a) jailer may be liable for false imprisonment for refusal to permit the prisoner to secure release on bail." As to the situation where there is the lack of an arrest warrant and the expectation of proceeding with a bail bond arises, as set forth in 32 Am.Jur.2d False Imprisonment Section 48

A jailer is liable for false imprisonment if the jailer knows or should know that an arrest was illegal and there is no right to imprison the person arrested, whether the act is done officially or otherwise. Liability for unlawful imprisonment may also be predicated on a jailer's unreasonable delay in taking the person arrested before a magistrate, on the refusal of a jailer to permit the prisoner to secure his release on bail, or on a policy of inaction or deliberate indifference resulting in incarceration of a detainee without arraignment for a period of time well beyond the statutory maximum.

Pursuant to Garvin v. Muir, 306 S.W.2d 256, 258 (1957), "(a) jailer has custody of the persons in the jail...and unless a jailer has legal authority in the form of a written mittimus or an

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order of a court, he is liable for false imprisonment in holding a person in jail beyond a reasonable time for procuring such authority." An opinion of this office dated October 12, 1998 determined that generally "....responsibility for insuring that an arrestee without a warrant be taken before a magistrate for prompt probable cause determination rests with jail officials. Indeed, there is case law which has found jail officials liable where the prisoner was not provided a speedy probable cause determination...Thus, the principal responsibility for insuring that a prisoner arrested without a warrant is brought promptly before a judicial officer for a probable cause determination rests with jail officials." As stated in 35 C.J.S. False Imprisonment Section 35, "(a)lthough a jailer cannot be held liable for errors in a warrant of commitment which is fair and valid on its face, a jailer is liable for false imprisonment when a prisoner is held in jail without court order...."

As stated in Warren v. Parrish, 436 S.W.2d 670, 672 (Mo. 1969), the essence of a case of false imprisonment "...is the confinement, without legal justification, by the wrongdoer of the person wronged." In Salter v. State of Washington, 86 P.2d 1159, 1162 (Wash. 2004), the court determined that "(i)t is well established that a jail is liable for false imprisonment if it holds an individual for an unreasonable time after it is under a duty to release the individual."

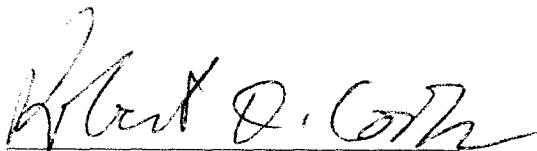
Referencing the above, in my opinion you are reasonable in expecting a warrant to be provided in order to continue to hold an individual picked up and transported to your jail. Otherwise, to hold an individual indefinitely without a warrant or other court order legitimizing the hold provides an opportunity for you as a jailer to face a possible charge of false imprisonment. Furthermore, as the State statute requires, an individual incarcerated, is entitled to a timely bond hearing and as to those situations where a warrant or other charging document is lacking, such may prevent access to that required bond hearing.

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General