



HENRY McMASTER
ATTORNEY GENERAL

April 15, 2010

Charles E. McNair, Chief
Cayce Department of Public Safety
Post Office Box 2004
Cayce, South Carolina 29171

Dear Chief McNair:

In a letter to this office you requested an opinion regarding arrests where the warrant has been entered into the NCIC system and a surrounding agency encounters the suspect and makes the arrest based upon the NCIC hit information. You stated as follows:

The problem that I would like to be addressed arises where the arresting agency requests that one of our officers meet them at the arrest location and transport the arrested person to our facility for booking. This has occurred numerous times in the past and has caused some controversy because it seems to circumvent the original intent of an officer being able to arrest a suspect based on a NCIC hit confirmation.

It is our belief that the arresting agency should transport the arrestee to their jail or detention facility and our agency should make the necessary arrangements to have the arrestee transported to our detention facility or jail. We have encountered situations where the warrant is not countersigned for the county that made the arrest of our suspect and they request that we respond to the arrest site to take custody of the arrestee. This seems improper because we lack jurisdiction in their county and the arrest was made on a NCIC hit confirmation, not a countersigned warrant for service in their county. We have also encountered situations in which they will make the arrest based on a NCIC hit confirmation and they will transport the arrestee straight to our facility or meet us and transfer custody inside our jurisdiction. This seems inappropriate and borders on kidnapping, for a lack of a better word.

The other scenario that we encounter involves the same situation but within our same county. We have had the same occurrences, some with warrants signed by our municipal judge and some that are signed by one of our county magistrates. Once again a surrounding agency will make an arrest based on a NCIC hit confirmation and request that we respond to the arrest site to take custody of the arrestee. On warrants that are signed by our municipal judge, it is once again our belief that the original intent of the law is being circumvented because the warrant has not been countersigned for service by a county magistrate or the arresting agency's municipal judge. In these situations, the arresting agency will sometimes transport the arrestee to our headquarters or meet us somewhere in our jurisdiction to transfer custody of the arrestee.

In all situations it seems more prudent for the arresting agency to transport the arrestee to their local jail or detention facility because it would be a neutral ground and thus more suitable for the transfer of the arrested individual to our custody.

A prior opinion of this office dated February 14, 1995 dealt with procedures for arrest where a computer list has been prepared showing outstanding arrest warrants which is given to officers in the field. When the officer sees an individual on the list, radio contact is made to verify the existence of the outstanding warrant. The individual is then arrested, taken to headquarters where the warrant is served. The question was raised as to whether there exists a legal distinction between misdemeanors not committed in an officer's presence and felonies for purposes of the validity of this procedure.

The 1995 opinion referenced the decision in State v. Grate, 310 S.C. 240, 423 S.E.2d 119 (1992) where the State Supreme Court upheld an arrest as lawful finding that the officer had the right to make a warrantless arrest based upon his possession of knowledge that a valid arrest warrant had been issued against a defendant. The opinion stated as follows:

...we would advise that the procedure approved by the Supreme Court in State v. Grate is applicable both to felonies and to misdemeanors. If an officer spots an individual whose name is listed on a computer sheet of outstanding arrest warrants, radios for verification that a warrant is outstanding on that person, the officer may then lawfully arrest the individual whether or not the warrant is for a misdemeanor or a felony. The warrant must be served on the person immediately upon return to headquarters with the person in custody.

S.C. Code Ann. § 22-5-190 states that

(A) [a] magistrate may endorse a warrant issued by a magistrate of another county when the person charged with a crime in the warrant resides in or is in the county of the endorsing magistrate. When a warrant is presented to a magistrate for endorsement, as provided in this section, the magistrate shall authorize the person presenting it or any special constable to execute it within his county.

(B) Whenever a warrant is issued by a mayor, recorder, judge, or other proper judicial officer of any municipality requiring the arrest of any person charged with a violation of a municipal ordinance, or a state statute within the trial jurisdiction of the municipal authorities, and the person sought to be arrested is presently incarcerated in a jail or detention center of the county in which the municipality is located, law enforcement officers of that municipality with the assistance of law enforcement officials of the county operating the jail or detention center may serve the warrant on that person without the necessity of a magistrate of the county endorsing the warrant as required by this section.

(C) Except as otherwise provided in subsection (B), whenever a warrant is issued by an intendant, mayor, recorder, judge, or other proper judicial officer of any municipality of this State, requiring the arrest of anyone charged with the violation of a municipal ordinance, or of a state statute within the trial jurisdiction of the municipal authorities, and the person sought to be arrested cannot be found within the municipal limits but is within the State, the officer issuing the warrant may send it to the magistrate having jurisdiction over the area in which the person may be found, which magistrate may endorse the warrant, which shall then be executed by the magistrates' constable or the sheriff of the county of the endorsing magistrate. The endorsement shall be to the following effect: It shall be addressed to the sheriff or any lawful constable of the county of the endorsing magistrate, directing the officer to arrest the person named in the warrant and bring the person before the endorsing magistrate, to be dealt with according to law. Unless a proper bond is filed with the endorsing magistrate by the person arrested, conditioned upon his or her appearance before the officer originally issuing the warrant, to answer the charges in it, the person arrested shall be promptly turned over to police officers of the municipality from which the warrant was originally issued who are hereby empowered to return the person to the municipality involved. A magistrate shall not be required to endorse the warrant when the maximum penalty for each offense charged by the warrant does

not exceed ten dollars or when the offense consists of the illegal parking of a motor vehicle.

An opinion of this office dated July 31, 2008 stated that “[i]n previous opinions, we have recognized that in order for an arrest warrant to be executed outside the county of the issuing magistrate, it must be endorsed for service by a magistrate of the county in which the warrant is to be executed.” The opinion, which dealt with the service of a summons instead of a warrant outside the county where it is issued, while citing Section 22-5-190 further stated that statutory authority

...should be read to impliedly authorize endorsement by a magistrate if the summons is issued in one county or municipality by a magistrate or municipality is to be served outside the county or municipal limits. In circumstances involving a summons issued by a magistrate, the summons would be endorsed by the magistrate of the county where the defendant is located. In the case of summons issued within the limits of a municipality, the summons would be similarly endorsed by a magistrate having jurisdiction over the area in which the defendant is located.

An opinion of this office dated July 22, 1986 dealt with warrants issued by a municipal judge. The opinion, referencing Section 22-5-190, stated that such statute is applicable when a warrant is issued by a municipal judge and the defendant named in the warrant is not within the limits of the municipality but is within the State. The opinion concluded that “...the warrant must be endorsed by a magistrate with jurisdiction over the area where the defendant is located prior to being served outside the limits of the municipality.” See also: Op. Atty. Gen. dated September 16, 1980 (prior to an arrest warrant being executed within the county of the issuing municipal judge, but beyond the limits of the municipality where the court is located, “...such warrants should be forwarded to a magistrate of the county in which the municipality is located for endorsement as...provided by Section 22-5-190”).

A prior opinion of this office dated August 30, 1995 dealt with the question of whether if a law enforcement agency faxes a copy of an original arrest warrant to another jurisdiction in another county of this State, can that agency legally have the faxed copy of the arrest warrant certified for service in that county. It was also asked whether that law enforcement agency can arrest the offender on a faxed copy of a warrant where the warrant was already entered on the NCIC active warrant file. Reference was made to a prior opinion of this office dated January 7, 1991 which concluded that there was no absolute legal prohibition against countersigning a faxed copy of an arrest warrant. The opinion further added that it was within the discretion of the individual magistrate as to whether a faxed copy of an arrest warrant is countersigned by that magistrate.

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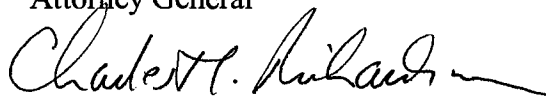
As to the situation you addressed, consistent with the above authorities, in the opinion of this office, upon an arrest being made outside the county where the warrant is issued following a NCIC hit confirmation, your conclusion that the arresting agency should transport the arrestee to their jail or detention facility and your agency should make the necessary arrangements to have the arrestee transported to your detention facility or jail would appear to be correct. Also, consistent with the above authorities, the warrant should be countersigned prior to being executed. Similarly, we are in agreement with your conclusion that following an arrest based on a NCIC hit confirmation, the arresting officer or agency should not typically transport the arrestee straight to your facility or meet you and transfer custody inside your jurisdiction.

Similarly, as to situations within your same county where warrants are either signed by your municipal judge or a county magistrate, and a surrounding agency makes an arrest based on a NCIC hit confirmation and request that you respond to the arrest site to take custody of the arrestee, there should be a countersigning of the warrant issued by the municipal judge where the arrest site is outside the municipal limits. It would not have to be countersigned if a county magistrate issued the original warrant and it is executed within that same county. I agree that typically your agency should respond to the arrest site to take custody and there should be avoidance of the situation where the arresting agency transports the arrestee to your headquarters or meets you somewhere in your jurisdiction to transfer custody of the arrestee.

If there are any questions, please advise.

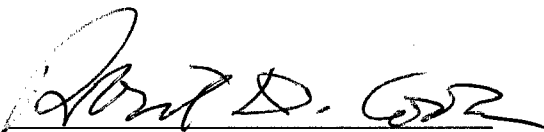
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
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REVIEWED AND APPROVED BY:



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