



HENRY McMASTER  
ATTORNEY GENERAL

August 18, 2008

Jeffrey B. Moore, Executive Director  
South Carolina Sheriffs' Association  
112 Westpark Boulevard  
Columbia, South Carolina 29210-3856

Dear Mr. Moore:

In a letter to this office you referenced the recent legislation regarding the amendment to S.C. Code Ann. § 22-5-110 as set forth in Act No. 346 of 2008. Such provision adds subsection (B) to the statute and states that

[n]otwithstanding another provision of law, a person charged with any misdemeanor offense requiring a warrant signed by nonlaw enforcement personnel to ensure the arrest of a person must be given a courtesy summons.

The referenced courtesy summons was created by Act No. 348 of 2002 which added S.C. Code Ann. § 22-5-115 which provides that:

[n]otwithstanding any other provision of law, a summary court or municipal judge may issue a summons to appear for trial instead of an arrest warrant, based upon a sworn statement of an affiant who is not a law enforcement officer investigating the case, if the sworn statement establishes probable cause that the alleged crime was committed. The summons must express adequately the charges against the defendant. If the defendant fails to appear before the court, he may be tried in his absence or a bench warrant may be issued for his arrest. The summons must be served personally upon the defendant.

You have questioned whether the requirement for a courtesy summons applies to a business when the bad check itself represents prima facie evidence that a crime has been committed. You also questioned whether such requirement applies when an individual has been detained for shoplifting. You referenced that “[i]n each of these cases, it is not a private citizen who seeks the arrest warrant but a business that seeks the warrant through an employee or business owner in the name of and on behalf of the business effected.”

S.C. Code Ann. § 22-3-710 states that “[a]ll proceedings before magistrates in criminal cases

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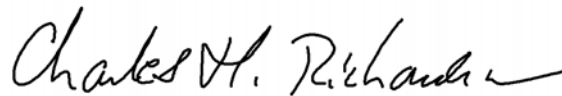
shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue.” `As set forth in a prior opinion of this office dated March 18, 1980, “...an individual must serve as the affiant on an arrest warrant.” That opinion further stated that we were unaware of any authority permitting a business entity itself to serve as the affiant on an arrest warrant. See also: Op. Atty. Gen. dated January 11, 2001 (“an arrest warrant can be based on probable cause established by any citizen.”). Therefore, in the opinion of this office, as to your contention that in shoplifting and fraudulent check cases, it is not a private citizen who seeks an arrest warrant but, instead, it is a business that seeks the warrant through an employee or business owner “in the name of and on behalf of the business effected”, such would not change the determination that it is an individual who serves as the affiant on an arrest warrant. Any assertion that the individual would not be considered as seeking the warrant but instead would seek the warrant “in the name of and on behalf of the business affected” would not change the result. A business could not considered in any respect as serving as the affiant on an arrest warrant. Inasmuch as subsection (B) of Section 22-5-110 provides that “...a person charged with any misdemeanor offense requiring a warrant signed by nonlaw enforcement personnel to ensure the arrest of a person must be given a courtesy summons”, in the opinion of this office, a courtesy summons would be applicable in shoplifting and fraudulent check cases involving misdemeanor offenses where the warrant is signed by nonlaw enforcement personnel, including personnel associated with a business.

This office has recently issued other opinions on the courtesy summons issue one of which also discusses the use of a courtesy summons in fraudulent check and shoplifting cases. I am enclosing copies of such opinions for your review.

If there are any questions, please advise.

Sincerely,

Henry McMaster  
Attor



Senior Assistant Attorney General

Enclosures

REVIEWED AND APPROVED BY



ROBERT D. COOK  
Assistant Deputy Attorney General