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The State of South Carolina



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December 7, 1993

Mr. George A. Markert
Assistant Director
South Carolina Court Administration
South Carolina Supreme Court
P. O. Box 50447
Columbia, South Carolina 29250

Dear George:

In a letter to this Office you referenced that recently-enacted Act No. 158 of 1993, the State Child Fatality Review and Prevention Act, provides the Department of Child Fatalities, coroners and medical examiners with new investigative tools, including inspection warrants, subpoenas and subpoenas duces tecum. Pursuant to Section 6:

If the home or premises last inhabited by a child is not the scene of the death of a child, the coroner, while conducting an investigation of the death, may petition the local magistrate of the appropriate judicial circuit for a warrant to inspect the home or premises inhabited by the deceased before death. The local magistrate shall issue the inspection warrant upon probable cause to believe that events in the home or premises may have contributed to the death of the child.

Section 7 similarly provides for the issuance of an inspection warrant to a medical examiner by the circuit court.

You indicated that inspection warrants are already used by family courts to permit inspections by the Department of Social Services where abuse or neglect is suspected. See: S.C. Code Section 20-7-650(c). In such investigations civil proceedings are anticipated. However, the inspection warrants authorized by the Child Fatality Review and Prevention Act would more likely be used in criminal investigations. Additionally, it is anticipated that

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coroners or medical examiners may wish to remove items, such as bedsheets, baby bottles, etc. from a home for further investigation. Therefore, you questioned the applicability of constitutional search and seizure issues to the investigations to be performed by coroners and medical examiners pursuant to the referenced provisions. You also forwarded copies of proposed inspection warrants which are being considered.

In addition to the inspection warrants utilized by the Department of Social Services pursuant to Section 20-7-650, other State statutes reference the use of inspection warrants in other situations. See: S.C. Code Sections 44-53-480 and 44-53-500 (controlled substance violations); 56-29-40 (chop shop operations); 44-53-1390 and 44-53-1400 (lead poisoning situations); 44-53-520(b) (drug forfeitures). The warrants authorized by Section 6 and 7 of the Child Fatality Review and Prevention Act are to be utilized "to inspect the home or premises inhabited by the deceased before death." These warrants are to be issued "upon probable cause to believe that events in the home or premises may have contributed to the death of the child." Therefore, the warrants are distinguishable from the types of inspection warrants provided by Section 56-29-40 and 44-53-500 which specifically provide for the seizure of property. For instance, Section 44-53-500(a)(2) states that the administrative inspection warrants authorized by such provision

... shall identify the item or types of property to be seized, if any... It shall command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified, and where appropriate, shall direct the seizure of the property specified.

Section 56-29-40(B) states

Seizure of ...(any tool, implement, or instrumentality associated with a chop shop operation)... may be made ...without process if ...(2) the seizure is incident to inspection under an administrative inspection warrant....

A typical search warrant issued by a court pursuant to S.C. Code Section 17-13-140 also specifically authorizes the seizure of property.

The United States Supreme Court in Michigan v. Tyler, 436 U.S. 499 at 506 (1978) stated that "(s)earches for administrative purposes, like searches for evidence of crime, are encompassed by the Fourth Amendment." This Office in an opinion dated April 13, 1987 determined however that administrative inspection warrants are


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distinguishable from search warrants. The opinion noted that the United States Supreme Court in See v. Seattle, 387 U.S. 541 (1987) held that the standard for probable cause required to obtain an administrative search warrant is less stringent than the standard required for a search pursuant to a criminal investigation. As stated by the Supreme Court in Marshall v. Barlow's Inc., 436 U.S. 307 at 320 (1978) "probable cause in the criminal law sense is not required."

It is questionable, therefore, whether the inspection warrant authorized by the Child Fatality Review and Prevention Act would authorize seizure of items from a home for further investigation. Pending legislative clarification, it is advisable that search warrants be obtained. Such would also avoid potential problems with possible criminal prosecutions where seized items may be used as evidence. Consistent with such, it appears that the short form inspection warrants authorizing the inspection of specified premises should be utilized. These forms reference the inspection of premises but do not specifically provide for the seizure of items.

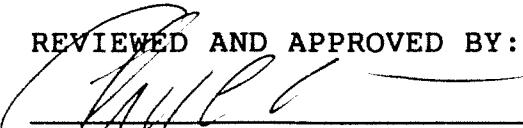
If there is anything further, please advise.


Sincerely,


Charles H. Richardson
Assistant Attorney General

CHR/bjt

REVIEWED AND APPROVED BY:


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