

The State of South Carolina



Office of the Attorney General

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November 4, 1993

The Honorable Winfred L. Flowers
Chief Magistrate for Darlington County
P. O. Box 782
Darlington, South Carolina 29532

Dear Magistrate Flowers:

In a letter to this Office you referenced a situation in which an arrest warrant for trespassing has been requested. You particularly questioned who may serve as affiant on the warrant, a church secretary because the property at issue is church property or an individual with a group which was holding a private meeting at the site where the incident allegedly occurred.

In issuing an arrest warrant, the magistrate's duty is to make an independent judicial determination as to probable cause based on the information provided by a witness under oath. Such is consistent with S.C. Code Section 22-3-710 which states:

All proceedings before magistrates in criminal cases 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.

It is generally stated that

Any citizen who has reasonable grounds to believe that the law has been violated has the right to cause the arrest of a person who he honestly and in good faith believes to be the offender.

22 C.J.S., Criminal Law, Section 326, p. 392. The probable cause expressed in the affidavit of an arrest warrant may be based on personal knowledge or hearsay. Opin. of the Atty. Gen. dated March 18, 1980. The affiant to an arrest warrant must be able to satisfy

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an inquiring magistrate that sufficient facts and information exist to support the warrant which determination is entirely within the magistrate's judgment. The penalty for perjury attaches to the facts alleged in the affidavit.

Therefore, as to your question as to who may serve as the affiant on the warrant, any individual who can meet the requirements as to providing probable cause as set forth above may serve in that capacity.

If there is anything further, please advise.

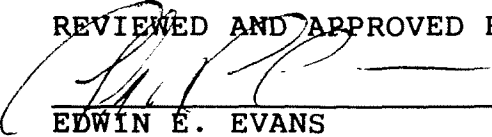
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:bvc

REVIEWED AND APPROVED BY:



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