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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 13, 1996

The Honorable Johnny Mack Brown
Sheriff, Greenville County
4 McGee Street
Greenville, South Carolina 29601

Re: Informal Opinion

Dear Sheriff Brown:

You seek advice on the following questions:

> [l]ast week during Family Court DSS hearings, we realized that, out of 34 people to appear in Family Court, there were active arrest warrants on 19 of them. The question came up as to whether or not this Office could serve criminal warrants on individuals going to or returning from a court, either by subpoena, court order, or voluntarily. Please let me now whether or not we can serve warrants under these circumstances.
>
> Another matter that has come to my attention is the Magistrates do not put the date of birth on fraudulent check warrants. The law does not require that a date of birth be placed on the arrest warrant. Recently, when attempting to serve some of these warrants, we learned that the individuals were juveniles. What would be the proper procedure when an arrest warrant has been issued on a fraudulent check charge and the person turns out to be a juvenile?

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Request Letter

LAW \ ANALYSIS

With respect to your first question, I recently addressed this issue in an Informal Opinion dated October 18, 1996. That Informal Opinion is enclosed for your information. In that Informal Opinion, I referenced S.C. Code Ann. Section 14-1-140 which states:

> [a]ll persons necessarily going to, attending on, returning from, the courts of this State shall be free from arrest except on criminal process for treason, felony, or breach of the peace.

Referencing earlier opinions of this Office (dated December 21, 1979; April 7, 1983 and February 17, 1993), it was noted that this Office has consistently concluded that the terms "treason, felony and breach of the peace" encompasses all crimes, "whatever their technical classification." Historically, immunity pursuant to such language has been deemed to confer a privilege only in civil cases. Therefore, my October 18, 1996 reaffirmed the conclusion that Section 14-1-140 provided no immunity from any criminal process whatever, regardless of the particular offense involved. That remains the Opinion of this Office.

Your second question is "[w]hat would be the proper procedure when an arrest warrant has been issued on a fraudulent check charge and the person turns out to be a juvenile?" In Op.Atty.Gen., Op. No. 88-17 (February 19, 1988), we referenced Section 20-7-600 which provides in pertinent part as follows:

> (A) When a child found violating a criminal law or ordinance ... is taken into custody, the taking into custody is not an arrest. The jurisdiction of the court attaches from the time of the taking into custody. When a child is so taken into custody, the officer taking the child into custody shall notify the parent, guardian, or custodian of the child as soon as possible.

In Op. No. 88-17, we stated:

> [i]mplicit within Sec. 20-7-400, 600 is the authority of a law enforcement officer to take into custody (arrest) any child under the age of seventeen found to violate any law (felony or misdemeanor) or local law or municipal ordinance. This office has previously opined that a juvenile may be taken into

> custody without an arrest warrant only where the offense has been committed in the presence of the arresting officer. 1980 Op.Atty.Gen. No. 80-102, p. 154. ... Of importance to your inquiry, our office further stated that "in cases of misdemeanors, the officer must view the offense or observe facts and circumstances which give him probable cause to believe a misdemeanor has been freshly committed by the juvenile before he may take the juvenile into custody." The opinion relied upon State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980). A review of the intervening case law and statutory authority reveals there has been no statutory change governing the law of arrest since the publication of the prior opinion. Of critical importance, a juvenile may be taken into custody without a warrant only [where] there is probable cause to believe that he has freshly committed a criminal or delinquent act, and an arrest predicated on mere suspicion or whim and not on probable cause is most probably invalid.

Thus, we have heretofore recognized that, notwithstanding the fact that Section 20-7-600 expressly states that the taking into custody of a juvenile by a law enforcement officer is "not an arrest ...", the laws and constitutional limitations governing arrest are applicable when a juvenile is taken into custody.

In Rogers v. Marlboro Co., 32 S.C. 555, 558, 11 S.E. 383 (1890), the State Supreme Court indicated a sheriff's responsibilities with respect to the execution of a warrant,

> When a warrant is placed in his hands by proper authority, his duty is to execute it, or attempt to do so. It is no part of his duty to inquire whether the prosecution is well founded, either in law or fact, and it would be impertinent in him to do so ... . [and, quoting Bragg v. Thompson, 19 S.C. at 76]
>
> The sheriff is a ministerial officer. He is neither judge nor lawyer. It is not his duty to supervise and correct judicial proceedings; but being an officer of court, ministerial in character, he cannot impugn its authority nor inquire into the regularity of its proceedings. His duty is to obey. This

> principle applies alike to him, whether the execution issues from a court of general or limited jurisdiction.

Thus, if the warrant is valid on its face, the Sheriff or his deputy does not possess authority to inquire into its validity, but to execute it.

And in Conques v. Fuselier, 327 So.2d 180 (La.1976), the court held that even where the court which issued the warrant possessed no jurisdiction, the law enforcement officer was bound to execute it where the document was valid on its face.

There, the Court concluded:

> [a]lthough Justice of the Peace Hardy improperly issued a warrant for young Conques' arrest without jurisdiction over the minor, the warrant of arrest was valid on its face, and Deputy Langlinais had no choice but to attempt its execution. Deputy Langlinais did not see the boy when he went to his home and can not be charged with knowledge of the minor's age.

327 So.2d at 182.

With respect to whether a person's date of birth must be indicated on the face of the warrant, I am unaware of any such requirement. The arrest warrant must be in a form "particularly describing ... the person ... to be seized." United States Constitution, Article I, Section 10. While there is a provision for "Date of Birth" on the approved Arrest Form, see South Carolina Bench Book For Magistrates And Municipal Judges, VI-11, and a date of birth is often indicated, see, Bench Book at III-14. (positive identification is required). I am cognizant of no provision of law addressing this issue. As indicated above, unless the warrant appears invalid on its face, it is the duty of the officer to execute it.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph
Enclosure