



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 11, 1997

The Honorable John Milton Knotts, Jr.
Member, House of Representatives
500 West Dunbar Road
West Columbia, South Carolina 29169

Re: Informal Opinion

Dear Representative Knotts:

You have asked whether a municipal police officer is required to execute an arrest warrant issued by a magistrate and presented to him for service. Apparently, such warrant is valid on its face.

This Office has opined on numerous occasions concerning the duty of a peace officer to execute any warrant of arrest which is valid upon its face. Section 5-7-110 of S.C. Code Ann. gives municipal police officers all of the powers and duties "conferred by law upon constables." A constable is a peace officer. State v. Luster, 178 S.C. 199, 204, 182 S.E. 427 (1935). Therefore, it is clear that "[a]n arrest warrant or search warrant issued by a magistrate, directed to any peace officer, may be served and execution thereon by a city policeman within the municipality." Op. Atty. Gen., Op. No. 1800 (February 16, 1965).

The law is well settled that where a peace officer is presented with an arrest warrant valid upon its face, he serve and execute it without delay. For example, in Malone v. Carey, 17 Cal.App.2d 505, 62 P.2d 166 (1936), it was stated that it is the duty of a police officer "to make the arrest, having received a warrant valid on its face." The Court went on to say that "[w]here a warrant is valid in form and issued by a court of competent jurisdiction is placed in the hands of ... [a police] officer for execution, it is his duty without delay to carry out its commands."

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The Supreme Court of South Carolina, as well as this office have repeatedly recognized that a law enforcement officer may not look behind a warrant when it is presented to him for service and execution. For example, in Rogers v. Marlboro County, 32 S.C. 555, 558, 11 S.E. 383 (1890), our Supreme Court stated with respect to the Sheriff the general rule which must be followed by peace officers. There, the Court emphatically stated:

[w]hen 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

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 or 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, applying this authority, we have concluded that "generally a law enforcement officer acts as a ministerial officer in executing a warrant valid on its face." Op. Atty. Gen., December 18, 1990 (citing, Bennett v. City of Grand Prairie, 883 F.2d 400 (5th Cir. 1990)). And in 80 C.J.S., Sheriffs and Constables, § 42, it is stated that

[a]t common law and under statutes declaratory thereof, sheriffs and deputy sheriffs and undersheriffs are peace officers. The duties of a sheriff are in large measure the same as are imposed on police officers (emphasis added).

Accordingly, presuming an arrest warrant is valid on its face, a police officer possesses no discretion to refuse to serve and execute the warrant, and such refusal may potentially subject the officer to contempt of court.

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.

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With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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