

# The State of South Carolina

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## Office of the Attorney General

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October 31, 1990

James H. Goss  
Director of Public Safety  
MUSC  
171 Ashley Avenue  
Charleston, SC 29425-1060

Dear Mr. Goss:

You stated that you wished to photograph "suspicious persons" found on State property after hours. These photographs would be used in establishing photo line-ups when crimes occur in your jurisdiction. However, in order to take these photographs, the "suspicious persons" would have to be detained and transported to your headquarters. You question the legality of that procedure.

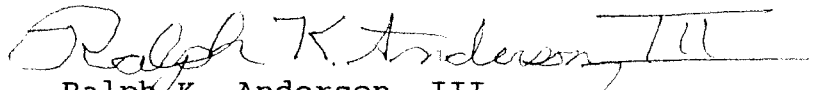
"Arrest involves the authority to arrest, the assertion of that authority with the intent to effect an arrest, and the restraint of the person to be arrested. All that is required for an 'arrest' is some act by [an] officer indicating his intention to detain or take [a] person into custody and thereby [sic] subject that person to the actual control and will of the officer." Citations omitted. Black's Law Dictionary, 110 (6th Ed. 1990). Under the above facts, your officers would detain and subject a person to their control in order to obtain the wanted photographs. Therefore, their actions would be an arrest.

Before an individual can be arrested without a warrant, there must be probable cause that a crime has occurred and that the person arrested committed that crime. Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694, 65 L.Ed.2d 1 (1985). In other words, when you encounter a "suspicious person," you must determine based on the circumstances whether or not there is probable cause to believe that that person has committed a crime. If there is probable cause, an arrest and subsequent photograph of an adult person would be proper. The attached opinion, S.C. Op. Atty. Gen., May 4, 1988, addresses the procedure to follow

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when arresting a juvenile. 1/ According to that opinion, if the suspicious person arrested is a juvenile, you must obtain a court order to use the juvenile's picture in law enforcement.

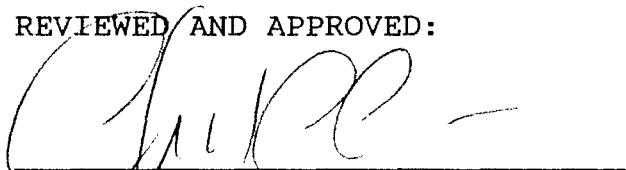
Sincerely,

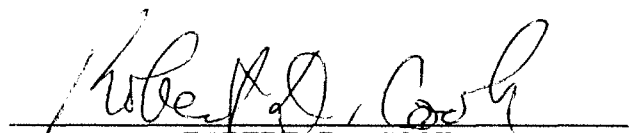
  
Ralph K. Anderson, III  
Assistant Attorney General

RKAIIII/rho

Enclosure

REVIEWED AND APPROVED:

  
EDWIN E. EVANS  
Chief Deputy Attorney General

  
ROBERT D. COOK  
Executive Assistant for Opinions

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1/ Although the statute upon which that opinion is based has been amended, the provisions applicable to the circumstances addressed here are still the same.