

1983 WL 182058 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 16, 1983

**\*1 Re: Arrest Warrants, Opinion #611**

Chief Russell F. Roark  
City of Union Police Department  
Municipal Building  
Herndon Street  
Drawer K  
Union, South Carolina 29379

Dear Chief Roark:

Pursuant to our telephone conversation on November 9, 1983, I am enclosing an opinion of this office that appears to address the question you raised.

Your fact situation and question dealt with a shoplifting case. An officer had been summoned to a store to transport a suspect, held in custody by the manager or employee for shoplifting, to the jail. You inquired as to whether the officer could sign the arrest warrant against the suspect instead of the merchant having to leave his place of business to sign such a warrant.

Enclosed please find a copy of an opinion issued to Sheriff Powell on September 8, 1980, by this office. Your attention is directed to the next to the last paragraph on page two (2). It is stated there that the duty of the law enforcement officer is only to transport the suspect to the jail. He is under no corresponding duty to investigate the arrest or make a determination as to whether probable cause existed to make the arrest. The security guard or private citizen (e.g., owner or employee of store) would be under a duty to go to the magistrate and swear out an arrest warrant.

This office has also issued a prior opinion in 1973 that any person who had knowledge of the facts involved, either directly or upon information imparted to him by others, could sign an affidavit upon which an arrest warrant could be issued. The implication would be that the officer could sign the warrant, based upon statements made to him by the store manager.

However, in view of the possessible civil liability problems, should the arrest had been made improperly, in bad faith, or in an otherwise illegal manner, in my opinion the better practice would be for the officer to provide transportation to the jail, and for the manager, employee, or security guard from the store to go swear out the arrest warrant. The liability concerns are discussed in more detail in the enclosed opinion.

If any further information can be provided by this office, please do not hesitate to contract me.

Sincerely yours,

James G. Bogle  
Assistant Attorney General

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