1980 WL 120604 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
January 15, 1980

***1** The Honorable James M. Waddell, Jr.
Chairman
South Carolina Coastal Council
Post Office Box 1026
Beaufort, South Carolina 29902

Dear Senator Waddell:
Your letter of November 29, 1979, addressed to Vic Evans of this Office has been referred to me for reply. You have inquired as to the necessity of State conservation officers first obtaining a search warrant when entering areas within the jurisdiction of the South Carolina Coastal Council (Coastal Zone) because of observed activity believed illegal or unauthorized. Specifically, you advise that helicopter patrol of this Zone has been instituted to facilitate discovery of those activities considered illegal within the Coastal Zone by reason of Sections 48-39-130 and 48-&39-170, Code of Laws of South Carolina (1976), as amended.

Both the Constitutions of the United States and the State of South Carolina protect against unreasonable searches and seizures. Authoritative case law has deemed warrantless searches to be per se unreasonable unless they fall into one of several specific and limited exceptions. See State v. Peters, 271 S.C. 498, 248 S.E.2d 475 (1978).

One recognized exception has come to be known as the plain view doctrine which allows a search and seizure of contraband, evidence, instruments of crime, etc., when found in plain view of a law enforcement officer who is in a place that he has a right to be. Analogous to that exception is the United States Supreme Court's recognition that the protection of the Fourth Amendment to the people in their ‘persons, houses, papers, and effects' does not extend to open fields. See Hester v. U.S., 265 U.S. 57, 68 L.Ed. 898 (1924).

While a search warrant may thus not be required prior to entry of private open lands, conservation officers must nevertheless have ‘probable cause’ before such entry (search) is made. This means that there must be a reasonable ground for suspicion, supported by facts and circumstances sufficiently strong in themselves to lead a reasonably cautious law enforcement officer to believe that an illegal activity is in progress or has occurred. Mere unsupported suspicion would not justify such entry.

Thus, when a conservation officer has, by reason of aerial or other open observation, developed probable cause to believe that illegal activity has occurred, he would be justified in entering private lands, by helicopter or otherwise, to make further search or enforcement. This permissible search and entry would not, however, extend to dwellings or other buildings situate on such areas within the Coastal Zone, and any further search into such structures could only be made incident to a search warrant first obtained. When probable cause exists to believe that unauthorized or illegal activities have occurred in violation of Section 48-39-130, it makes no difference whether such activity is currently then in progress or has been completed; and a conservation officer would be justified in making entry without search warrant in either instance.

***2** I sincerely hope that the foregoing has sufficiently answered the questions posed; but if I can be of further assistance, please do not hesitate to call upon me.

With warm personal regards,
Yours very truly,

John P. Wilson
Senior Assistant Attorney General

ATTACHMENT
January 15, 1980
OPINION NO. 80-4 p. 14

Criminal Justice Academy

SUBJECT: Law enforcement, training ‘within one year’, § 23-23-40, successive employers; Statutes, 1976 § 23-23-40, Law enforcement training, ‘within one year’, successive; Words and phrases, ‘within one year’, 1976 § 23-23-40, law enforcement training;

SYLLABUS: Candidate for Training Academy may have completed ‘one year after his date of appointment’ with successive employers if interval between employment is not unreasonably long. Section 23-23-40, Code of Laws, 1976.

Daniel R. McLeod
Attorney General

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