

1980 WL 121239 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 22, 1980

*1 M. Eve Moredock, Esquire
Staff Attorney
S. C. Court Administration
Post Office Box 11788
Columbia, South Carolina 29211

Dear Eve:

In a letter to this Office you questioned the effect and application of [Section 22-5-180, Code of Laws of South Carolina](#), 1976, which states:

‘(n)o magistrate shall deputize the person swearing out a warrant in any case to serve it.’

Referencing such section you asked the following questions:

1. Is a law enforcement officer, who is duly authorized to serve criminal warrants, precluded from serving a warrant when he has acted as the affiant in obtaining the warrant?
2. Does [S. C. Code Section 22-5-180](#) apply to both arrest warrants and search warrants?

As to your first question, this Office in several previous opinions has consistently held that pursuant to [Section 22-5-180, supra.](#), a magistrate should not authorize and a law enforcement officer should not serve an arrest warrant issued upon such officer's affidavit. (See 1958 Op. Att'y Gen., p. 269, 1958 Op. Att'y Gen., p. 211, 1936 Op. Att'y Gen., p. 111, 1927 Op. Att'y Gen., p. 93.) Early opinions of the South Carolina Supreme Court have also recognized this principle. (See, e.g., [State v. DuPre](#), 134 S.C. 268, 131 S.E. 419 (1926); [State v. Prescott](#), 125 S.C. 22, 119 S.E. 637 (1923) (dis. op. Watts); [State v. Williams](#), 76 S.C. 135, 56 S.E. 783 (1907); [State v. Culbreath](#), 121 S.C. 89, 113 S.E. 476 (1922). Therefore, pursuant to [Section 22-5-180, supra.](#), the law enforcement officer who acts as the affiant in obtaining an arrest warrant should not serve such warrant.

As to your question concerning whether [Section 22-5-180, supra.](#), applies to both search warrants and arrest warrants, in the opinion of this Office, such section applies only to arrest warrants. Pursuant to [Section 17-13-140, Code of Laws of South Carolina](#), 1976, search warrants issued by a magistrate or a judge of a court of record, ‘. . . shall be directed to any police officer having jurisdiction in the county where issued, including members of the South Carolina Law Enforcement Division . . .’

With best wishes.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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