

1977 S.C. Op. Atty. Gen. 295 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-370, 1977 WL 28852

Office of the Attorney General

State of South Carolina

Opinion No. 77-370

November 18, 1977

***1** The statutory requirement is that the magistrate (or other judicial officer explicitly noted) shall issue a warrant upon sworn affidavit establishing probable cause. Nowhere is a police officer authorized to sign the name of the magistrate. Therefore, a warrant is properly issued only when signed by the magistrate and only upon a sworn affidavit.

South Carolina Court Administration

AUTHORITIES:

Section 17–13–140 of the Code of Laws of South Carolina (1976);

Article I, Section 10 Constitution of South Carolina; [Bowen v. State, 115 P. 376, 5 Okl.Cr. 605 \(1911\)](#).

You have asked whether it is lawful for a magistrate to direct a law enforcement officer to sign his name to arrest and search warrants after probable cause has been given to the magistrate over the telephone, at a place other than the magistrate's office, or at the magistrate's office when the magistrate is prevented from signing the warrant because of other activities?

Section 17–13–140 of the Code of Laws of South Carolina (1976) authorizes only a magistrate or recorder or city judge having the powers of a magistrate, or a judge having jurisdiction over the area where the property sought is located to issue search warrants. That warrant is to be issued only “upon affidavit sworn to before the magistrate ... establishing the grounds for the warrant.” This Section is set up so as to afford individuals the constitutional right in Article I, Section 10 of the Constitution to be free from unreasonable searches and seizures.

Signing the warrant is an element of its issuance; therefore, only those judicial officers authorized by the above Section may sign a warrant.

In [Bowen v. State, 115 P. 376, 5 Okl.Cr. 605 \(1911\)](#), a clerk of court issued an arrest warrant. The Court held that warrant to be void, as the magistrate was to have issued the warrant. At page 376 the Court stated, “a warrant of arrest must be signed by the magistrate issuing the same.”

A. Camden Lewis
Assistant Attorney General

1977 S.C. Op. Atty. Gen. 295 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-370, 1977 WL 28852