

1999 WL 986759 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 29, 1999

***1 Ms. Sharon Turner**
Court Administrator
Richland County Central Court
Post Office Box 192
Columbia, South Carolina 29202

Dear Ms. Turner:

In a letter to this office you raised several questions relating to S.C. Code Ann. § 56-25-40(b) (1998) which states that "(a)ny person who wilfully fails to appear before the court as required by a uniform traffic citation without having posted such bond as may be required by the court or has been granted a continuance by the court shall be deemed guilty of a misdemeanor...." For such violation, the fine is not more than two hundred dollars or thirty days and, therefore, is within the jurisdiction of a magistrate's court.

In your first question you asked whether it is proper for a court employee to sign as the affiant on an arrest warrant for a violation of the referenced provision in that the employee is in possession of the evidence that the individual failed to appear, such as, payment records, the court docket, etc.

A prior opinion of this office dated November 4, 1993 stated that ...any citizen who has reasonable grounds to believe that the law has been violated has the right to cause the arrest of a person who he honestly and in good faith believes to be the offender...Furthermore, the probable cause expressed in the affidavit may be based on personal knowledge or hearsay... The affiant to an arrest warrant must be able to satisfy an inquiring magistrate that sufficient facts and information exist to support the warrant which determination is entirely within the magistrate's judgment....

Therefore, a court employee would be authorized to act as the affiant on a warrant, just as any other citizen would be authorized to act, who in good faith believes an individual has violated § 56-25-40(b) as set out in the referenced opinion.

You next asked "should the warrants be drawn at the appropriate time by the court for the signature as affiant by the original citing officer, and if so, can he/she decline to pursue the failure to appear?" I am unaware of any basis to indicate that the original citing officer would necessarily be the one who must make any decision as to whether to proceed with a failure to appear case. As stated in the first question, any individual who in good faith believes a criminal violation has occurred can act as affiant on a warrant. Any decision as to who is to proceed and in what cases would appear to be a policy decision dependent upon review by the appropriate local prosecuting authorities.

As to your question as to who should prosecute the case on behalf of the State, I am enclosing a copy of a prior opinion of this office dated November 7, 1990 which comments in detail on the responsibility of a solicitor as to any criminal case. As to your particular situation, I would refer you to that portion of the opinion which states:
...it appears that a solicitor should be considered as having control of any criminal cases brought in magistrate's court...Of course, the degree of the solicitor's involvement in particular magistrate's court cases is a matter within his discretion.

***2** Therefore, your question as to who should prosecute a particular case, is a matter that should be resolved in coordination with the local prosecuting authorities.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am,

Very truly yours,

Charles H. Richardson
Senior Assistant Attorney General

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