

1979 WL 43148 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 1, 1979

*1 Honorable R. Carey Werner
Greenville County Magistrate
303 Randall Street
Greer, South Carolina 29651

Dear Magistrate Werner:

In a letter to this Office you asked whether in those situations where an order has been issued in a claim and delivery action to restrain a defendant from damaging, concealing, or removing the property which is the subject of a claim and delivery action and the order is violated, would an arrest warrant or a bench warrant be issued to bring the defendant before the court?

[Section 22-3-1370, Code of Laws of South Carolina](#), 1976, provides that upon proper showing that an order restraining a defendant from damaging, concealing, or removing property subject to a claim and delivery action has been violated, ‘. . . the defendant shall be subject to a fine not to exceed one hundred dollars or imprisonment for not more than thirty days.’ While an argument may be made that inasmuch as the claim and delivery action has been initiated and an order served on the defendant thus giving the court jurisdiction of the defendant, a bench warrant may suffice, inasmuch as a criminal penalty is provided for the violation of such order, this Office recommends the utilization of an arrest warrant to bring the defendant before the court. This Office in a prior opinion dated October 31, 1978 indicated that: ‘. . . bench warrants . . . may not be used to initiate a criminal action. Instead, such . . . (are typically) . . . used to bring a defendant back before a particular court for a specific purpose after the court has acquired jurisdiction over the defendant by virtue of a proper charging document.’

This Office in such opinion referenced, for instance, that if a defendant had been released on bond and was later charged for failing to appear before the court as required pursuant to [Section 17-15-90, Code of Laws of South Carolina](#), 1976, an offense for which a criminal penalty is provided, an arrest warrant would have to be issued to give a court jurisdiction to consider such a case. A bench warrant would not suffice as a charging document in that instance.

If there is anything further, do not hesitate to contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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