

1978 WL 34940 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 15, 1978

***1 RE: Sheriff or Deputy Breaking into Houses in Certain Cases**

Mr. Neal Forney
Assistant Director
S. C. Court Administration
P. O. Box 11788
Columbia, S. C. 29211

Dear Neal:

In your letter of May 18, 1978 to this Office you put forth the following questions:

1. Does a sheriff or his deputy have the authority to break and enter a house, after request and refusal, to distrain sufficient property upon the rented premises to pay rent and costs under the authority of a distress warrant?
2. Do the provisions of [Section 23-15-60 of the 1976 Code](#) of Laws pertaining to the sheriff or deputy breaking into houses to seize goods when they have process requiring them to seize such goods apply to magistrates' constables as well as sheriffs or deputy sheriffs?

As to question one, a previous opinion of this Office, 1964 Ops. Atty, Gen. No. 1720, p. 196, a copy of which is enclosed stated:

the authority to break and enter a residence building under civil process may be exercised in claim and delivery only-unless the authority is granted in other types of civil actions by special statute not discussed here . . . Collection of rent by distraint on a tenant's property . . . does not come within the authority conferred by . . . (those sections dealing with claim and delivery) . . . and the Sections relating to such distraint do not empower officers to break the outer doors of residences.

This prior opinion did not cite [Section 23-15-60, Code of Laws of South Carolina](#), 1976, as authority for breaking and entering to enforce a distress warrant.

As to your second question, it is the opinion of this Office that [Section 23-15-60 of the 1976 Code of Laws of South Carolina](#) has no applicability to magistrate's constables. I am not aware of any authority expressly granting to magistrate's constables that same authority held by sheriffs or deputy sheriffs in this regard.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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