

1975 S.C. Op. Atty. Gen. 22 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3944, 1975 WL 22242

Office of the Attorney General

State of South Carolina

Opinion No. 3944

January 27, 1975

\*1 The Honorable Ray B. Edenfield  
Allendale County Magistrate  
Allendale, SC 29810

Dear Judge Edenfield:

I am in receipt of your recent letter in which you pose the following question:

If a law enforcement officer is in possession of a warrant for the arrest of an individual and goes to the residence of that individual or to a residence where that individual is a frequent visitor, and is informed that the individual is not there, is the officer required to obtain a search warrant in order to search the premises for the subject?

The Fourth Amendment to the United States Constitution and Article I, Section 16 of the South Carolina Constitution protects people and their property against unreasonable searches and seizures. One of the means of assuring that such searches are reasonable is the requirement that a warrant be obtained prior to a search.

There are instances in which a warrantless search may be conducted. No warrant is required where the search is conducted with the consent of the person affected by the search. While a warrantless search may also be conducted incident to a lawful arrest, ([Ker v. California](#), 374 U.S. 23 (1963).) these situations deal with the search of persons arrested and not searches for such persons.

It seems advisable that, under the factual situation which you supplied to this office, a search warrant should be obtained prior to searching a dwelling for a suspect. Such a procedure should not place an undue burden on the law enforcement officer. If he has reason to believe the suspect is hiding in the dwelling, he may seek to obtain a search warrant at the same time he obtains the arrest warrant.

I hope that this information is useful to you. If I can be of further assistance in the future please feel free to contact me.  
Very truly yours,

Hutson S. Davis, Jr.  
Assistant Attorney General

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