

1975 WL 29688 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 10, 1975

**\*1 Re: H-2315**

Honorable David Fairly McInnis  
Member  
House of Representatives  
Sumter County  
702 Reynolds Rd.  
Sumter, South Carolina

Dear Mr. McInnis:

My opinion has been requested as to the validity of H-2315 which relates to basic search provisions by the State Fire Marshal in certain circumstances.

The Bill (H-2315) would amend Section 37-82 of the 1962 Code of Laws, so as to provide:

The State Fire Marshal shall have authority at all times of the day or night, in the performance of duties imposed by this article, to enter upon and examine any building or premises where any fire has occurred and other buildings or premises adjoining. Provided, that the Fire Marshal may enter a private dwelling or premise only with the permission of the owner or occupant, unless there is probable cause to believe that a violation of the provisions respecting fire laws exists, that there exists eminent danger to the occupants thereof or arson.

It is my opinion that this provision is most probably unconstitutional for the following reasons:

In [Camara v. Municipal Court of San Francisco](#), 387 U.S. 523, 18 L.ed. 2d 930, 87 S. Ct. 1727; See [v. Seattle](#), 387 U.S. 541, 18 L.ed. 2d 943, 87 S. Ct. 1737, the Supreme Court of the United States held that administrative searches under a fire, health, or building inspection program, were significant intrusions upon the interests protected by the Fourth Amendment; that under the Fourth Amendment a defendant has a constitutional right to insist that a search warrant be obtained prior to the inspection of his premises; and that a defendant cannot constitutionally be convicted for refusal to consent to a warrantless inspection. The Court, moreover, held that the Fourth Amendment forbade warrantless inspections of commercial structures as well as private residences.

It is possible that Section 37-82 as proposed to be amended by H-2315 may come within the scope of a subsequent decided Supreme Court decision in that the fire marshal's authority is limited to instances 'where any fire has occurred' or upon the additional ground that inspections made by the fire marshal further urgent governmental interests and where the possibilities of abuse and threat to privacy are not of impressive dimensions. See [U.S. v. Biswell](#), 406 U.S. 311, 32 L.ed. 2d 87, 92 S. Ct. 1593. I do not, however, see a clear basis for concluding that the warrantless search authorized in the first sentence of amended Section 37-82 reaches such dimensions as those found valid in [Biswell](#) (involving search of licensed gun dealers), or [Colonnade v. U.S.](#), 397 U.S. 72, 25 L.ed. 2d 60, 90 S. Ct. 774 (involving search of licensed dealers in alcoholic beverages).

With regard to the provisos set forth above, it is my opinion that a statute can be framed to achieve this purpose but that in order to secure a valid search warrant, such a statute should follow the constitutional mandate (Article 1, Section

10) 'supported by oath or affirmation, and particularly in describing the place to be searched, the person or thing to be seized and the information to be obtained.' The same comments are applicable to the proposed amendment set forth in Section 2 of the Bill and relating to Section 47-1184 and to the provisions of Section 3 of the Bill.

\*2 In summary, the Supreme Court has held that searches under a fire, health or building inspection program must be accomplished by search warrant, in the absence of consent or other legal exceptions to the search and seizure provisions of the Constitution. In subsequent opinions, the Court also has permitted warrantless searches, unaccompanied by forcible entry in the case of searches of premises of licensed gun dealers and illegal firearms, and searches of the premises of licensed liquor dealers for violation of liquor laws. Those exceptions were made in view of the 'urgency of the governmental interest' involved and upon the fact that the premises searched were licensed for firearms, and liquor activities, and is accepting a federal license the owner did so with the knowledge that his business records, etc., would be subject to effective inspection. Entry in buildings where a fire has occurred may be of such dimensions as to meet such a requirement even in the absence of a licensed provision but I am not certain that it does.

The statute authorizing the search of licensed firearms dealers provided:

The Secretary may enter during business hours the premises (including places of storage) of any firearms or ammunition . . . dealer . . . for the purpose of inspecting or examining (1) any records or documents required to be kept . . . and (2) any firearms or ammunition kept or stored by such . . . dealer . . . [18 USC § 923\(g\)](#).

The search of licensed liquor dealers provided as follows:

The Secretary or his delegate may enter during business hours the premises . . . of any dealer for the purpose of inspecting or examining any records or other documents required to be kept . . . under this chapter . . . [26 USC § 5146\(b\)](#).

Very truly yours,

Daniel R. McLeod  
Attorney General

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