

1973 WL 26846 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 20, 1973

**\*1 In Re: Deputies, Taking Custody of Persons Arrested by a Private Citizen**

Honorable Frank Powell  
Sheriff  
Richland County  
1400 Huger Street  
Columbia, South Carolina

Dear Sheriff Powell:

You have inquired as to the legal position of deputies sheriff who take custody of persons who have been arrested by a private citizen—for the purpose of transporting the arrestee to jail.

Such deputy would have no legal liability to the arrestee arising out of such custody and jailing if the arrest was legal in the first instance. Private citizens may arrest for breach of the peace committed in their presence, or for felony, or for stealing (regardless of the value of the property involved) committed in the presence of the citizen. Section 17-251, 1962 Code (S.C.).

An officer who is requested to take custody of a subject who has been arrested by a private citizen is under a legal duty to make all necessary inquiry to satisfy himself that the initial arrest was lawful. There could be joint civil and criminal liability of both the arresting private citizen and the officer when the initial arrest was not lawful. I cannot set forth a simple rule-of-thumb to guide your officers in this area. Only a sound knowledge of the basics of laws of arrest will protect them adequately.

Yours very truly,

Joseph C. Coleman  
Deputy Attorney General

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