

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

July 17, 2000

Opinion No. 00-121

Warrant to search third-party residence to effect an arrest

QUESTION

When law enforcement officers believe that a person wanted on an arrest warrant is in the home of a third party, can a search warrant be obtained to search the residence of the third party for the individual named in the warrant?

OPINION

It is the opinion of this Office that a magistrate may issue a search warrant to search for a person in order to arrest them, provided there is probable cause to effect an arrest. The warrant may authorize a search of a third-party residence for such a person, so long as a magistrate makes the determination that probable cause exists to believe that the person to be seized is within that residence.

ANALYSIS

While search warrants have traditionally been issued for the seizure of physical items, Rule 41, Tennessee Rules of Criminal Procedure, allows the issuance of a search warrant for persons as well. Rule 41(b)(4) specifically provides that a search warrant may be issued to search for and seize any person for whose arrest there is probable cause. Rule 41(b)(4) permits a search warrant to issue to effect an arrest where required by the decision in *Steagald v. United States*, 451 U.S. 204 (1981). Tenn. R. Crim. P. 41, Advisory Commission Comments. In *Steagald*, the United States Supreme Court held that law enforcement officers are required to obtain a search warrant before entering the home of a third party to arrest an individual. Absent exigent circumstances, a magistrate must make the decision that probable cause exists to believe that the person to be seized is within a particular place. 451 U.S. at 214.

Accordingly, it is the opinion of this Office that Rule 41, Tenn. R. Crim. P., authorizes a search warrant to search a third-party residence for a person wanted on an arrest warrant, so long as the issuing magistrate determines that probable cause exists to believe the person is within the residence.

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