

CRIMINAL PROCEDURE: INSPECTION WARRANTS.

Computer models that assign points to identify specific risk factors for building deterioration may be used to form basis for probable cause to issue administrative search warrant for inspection purposes. Officials undertaking investigatory searches should seek court-approved inspection warrants. Warrant application must provide circuit court judge with factual allegations sufficient to justify independent determination that inspection program is based on reasonable legislative or administrative standards that are applied in neutral and nondiscriminatory manner. Circuit court judge has exclusive jurisdiction to determine whether, in any given situation, computer model may be used to form basis for probable cause to issue administrative search warrant.

The Honorable I. Vincent Behm Jr.

Member, House of Delegates

January 5, 1999

You inquire regarding the basis for establishing probable cause for issuance of an administrative search warrant to inspect deteriorating buildings so identified by a computer model. You specifically ask whether a computer model that identifies, by use of a point system, specific risk factors for detecting the extent of a building's deterioration is a valid basis upon which to form probable cause to issue an administrative search warrant to inspect the building. You next inquire regarding the identity of the official who may issue an administrative search warrant and the standards to be applied for its issuance. Finally, you represent that a computer model will be designed to select for inspection dwelling units having the highest degree of risk of deterioration, using a point system for risk factors designated as "primary" and "secondary."¹ You ask whether such a computer model may be used to validate the probable cause required to issue an administrative search warrant.

You first ask whether computer models that use a point system to identify risk factors for building deterioration are valid instruments by which to form a basis for probable cause to issue an administrative search warrant for inspection purposes. A 1986 opinion of the Attorney General considers the issue of what constitutes "probable cause" for the issuance of an administrative search warrant and concludes:

"Probable cause" in the criminal sense is not required. For purposes of an administrative search, probable cause justifying the issuance of a warrant may be based, not only upon specific evidence of an existing violation, but also upon a showing that "reasonable legislative or administrative standards for conducting an ... inspection are satisfied with respect to a particular [establishment]." *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967). More specifically, the "warrant application must provide the judicial officer with factual allegations sufficient to justify an independent determination that the inspection program is based on reasonable standards and that the standards are being applied ... in a neutral and nondiscriminatory manner." *Mosher Steel v. Teig*, 229 Va. 95, 103, 327 S.E.2d 87, 93 (1985).^[2]

In the case of *Camara v. Municipal Court*, the Supreme Court of the United States provides examples of the factors upon which reasonable legislative or administrative standards may be based.³ Such factors include "the passage of time, the nature of the building (e.g., a multi-family

apartment house), or the condition of the entire area."⁴ In accord with the prior opinion of the Attorney General and the Court's opinion in *Camara*, I am of the opinion that, as a generalized proposition, computer models that assign points to identify specific risk factors for building deterioration, such as those that are based on the passage of time, the nature of the building, or the condition of the entire area, may be used to form the basis for probable cause to issue an administrative search warrant for inspection purposes.

You next inquire regarding the identity of the official who issues this type of search warrant and the standards to be applied for its issuance.

A 1979 opinion of the Attorney General notes that §§ 19.2-393 through 19.2-397 of the *Code of Virginia* "at least to some degree reflect the legislature's general approach as to obtaining administrative search warrants, and that the procedure they set forth may legitimately be regarded as the functional equivalent of a warrant."⁵ That opinion concludes that "until such time as the legislature sees fit to enact legislation allowing administrative searches in situations other than that found in § 19.2-393, officials seeking to undertake investigatory ... searches should seek court-approved inspection warrants under the mechanism established by [§§ 19.2-393 through 19.2-397]."⁶

Chapter 24 of Title 19.2, §§ 19.2-393 through 19.2-397, governs inspection warrants. Section 19.2-393 defines an "inspection warrant" as "an order in writing, made in the name of the Commonwealth, signed by any judge of the circuit court whose territorial jurisdiction encompasses the property or premises to be inspected or entered." Section 19.2-394 authorizes the issuance of an inspection warrant for "any administrative search authorized by state or local law or regulation." The General Assembly has not amended § 19.2-393 in any manner to indicate that it disagrees with the construction placed on the statute by the Attorney General. The General Assembly is presumed to have knowledge of the Attorney General's published interpretations of a statute, and its failure to make corrective amendments evinces legislative acquiescence in the interpretation.⁷ I must conclude, therefore, in accord with the prior opinions, that for administrative warrants for searches in situations other than those mentioned in § 19.2-393, officials undertaking investigatory searches should seek court-approved inspection warrants under the mechanism established in Chapter 24.

The 1986 opinion, a portion of which is quoted above, also considers the procedure for obtaining an administrative warrant, and concludes that in obtaining such warrant, "the local official should follow the procedure outlined by the Supreme Court of Virginia in the *Mosher Steel* decision."⁸ I am in agreement with this conclusion in the 1986 opinion, and, therefore, it is also my opinion that the "warrant application must provide the judicial officer with factual allegations sufficient to justify an independent determination that the inspection program is based on reasonable standards and that the standards are being applied ... in a neutral and nondiscriminatory manner."⁹

Finally, you represent that a computer model will be designed to select for inspection dwelling units with the highest degree of risk of deterioration based on a point system to identify specific risk factors designated as "primary" and "secondary." You ask whether it is valid to use such a computer model to establish the probable cause required to issue an administrative search warrant.

For many years, Attorneys General have concluded that § 2.1-118, the authorizing statute for official opinions of the Attorney General, does not contemplate that such an opinion be rendered on matters that do not interpret questions of law.¹⁰ This Office historically has declined to render official opinions on matters solely of a purely local concern, and has limited responses to opinion requests to matters concerning interpretation of federal or state law, rule or regulation.¹¹ In addition, Attorneys General consistently have declined to render official opinions pursuant to § 2.1-118 when the request (1) does not involve a question of law, (2) requires the interpretation

of a matter reserved to another entity, (3) involves a matter currently in litigation, and (4) involves a matter of purely local concern or procedure.¹²

The General Assembly has acquiesced in the conclusion of the Attorney General that administrative warrants are to be sought from the "judge of the circuit court whose territorial jurisdiction encompasses the property or premises to be inspected or entered."¹³ In addition, the General Assembly has given exclusive jurisdiction to such judge to determine whether probable cause exists for the issuance of such a warrant.¹⁴ The circuit court judge, therefore, must determine whether, in a particular case, such a computer model may be used to form the basis for probable cause to issue an administrative warrant. Consequently, consistent with the historical practice of Attorneys General, I am unable to comment on whether such a computer program would serve as a valid basis to establish probable cause for the issuance of an administrative search warrant in any given factual situation.

¹Dwelling units assessed points by the computer model under the "primary" risk factors will be considered for inspection and will be assessed points under the "secondary" risk factors. The number of dwelling units subject to annual inspection will equal the city-wide deterioration rate, or 2% of the city's dwelling units, whichever is less. The city-wide deterioration rate will be established on an annual basis from the percentage of dwelling units in the city exhibiting major exterior deterioration. The computer model will select for inspection dwelling units having the highest degree of risk of deterioration based on the following risk factors:

1. Primary risk factors:

(a) Exterior conditions - 10 points for major deterioration;

(b) Violations related to property maintenance within the past 5 years - 2, 5, and 8 points for 1, 2, and 3 or more violations, respectively;

(c) Boarded-up buildings - 15 points.

2. Secondary risk factors (points are assigned only to units assessed points under primary risk factors):

(a) Deterioration - 4 points for property located in a neighborhood with deterioration at or above the city average, and 6 points for minor exterior deterioration;

(b) Single-family lot width - 2 points for lot width 31-to-49 feet, and 4 points for lot width less than 31 feet;

(c) Dwelling type - 2 points for manufactured/mobile homes, 3 points for duplex/2-family dwellings, 3 points for multifamily, and 8 points for rooming houses;

(d) Age of dwelling unit - 2 points if 15-to-20 years old, 3 points if 21-to-25 years old, 4 points if 26 years and older;

(e) Assessed value of dwelling unit - (i) single-family - 1 point if between \$80-\$90,000, 2 points if between \$70-\$79,999, 3 points if between \$50-\$69,999, and 4 points if under \$50,000;

(ii) multifamily - 1 point if between \$35-\$40,000, 2 points if between \$30-\$34,999, 3 points if between \$25-\$29,999, and 4 points if under \$25,000.

²1986-1987 Op. Va. Att'y Gen. 221, 222.

³"Probable cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting such inspection ... are satisfied with respect to the particular place" Section 19.2-394.

⁴*Camara v. Municipal Court*, 387 U.S. at 538.

⁵1978-1979 Op. Va. Att'y Gen. 80, 83.

⁶*Id.*

⁷See *Lee Gardens v. Arlington County Board*, 250 Va. 534, 540, 463 S.E.2d 646, 649 (1995).

⁸1986-1987 Op. Va. Att'y Gen., *supra* note 2, at 222.

⁹*Id.* (quoting *Mosher Steel v. Teig*, 229 Va. at 103, 327 S.E. at 93).

¹⁰See, e.g., Op. Va. Att'y Gen.: 1997 at 105, 107; 1991 at 122, 124; 1986-1987 at 1, 4, 6, 1977-1978 at 31, 33.

¹¹See Op. Va. Att'y Gen.: 1997, *supra*; 1991 at 237, 238; 1989 at 293, 298; 1986-1987 at 347, 348; 1977-1978, *supra*; 1976-1977 at 17, 17.

¹²See Op. Va. Att'y Gen.: 1997, *supra* note 10; 1977-1978, *supra* note 10, at 31.

¹³Section 19.2-393.

¹⁴Section 19.2-394.