



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

September 11, 1998

Lt. Ron Taylor
Civil Process Division
Aiken County Sheriff's Office
420 Hampton Avenue
Aiken, South Carolina 29801

Re: **Informal Opinion**

Dear Lt. Taylor:

You have requested advice "concerning service of court documents on private property." By way of background, you state the following:

[f]or example, a company doing business within our jurisdiction has refused to cooperate in verifying employment or coordination with us for service of court documents. ... It is my opinion that if a Deputy Sheriff goes to a plant for service of a court ordered rule to show cause or Family Court Bench Warrant and meets with resistance, then charges could be brought for interfering.

Law / Analysis

I am aware of no statute which prohibits the service of court papers, order or a bench warrant by a deputy sheriff at an employer's place of business. Indeed, S. C. Code Ann. Sec. 23-15-80 provides that

[t]he sheriffs or their deputies shall attend all the circuit courts that may be held within their respective counties and enforce such rules as such courts may establish. During the term time of any such court any sheriff or his deputy shall serve any rule

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of such court or writ of attachment for any contempt thereof on any party or witness **in any part of this State**. (emphasis added).

No distinction is found therein with respect to an employer's place of business or plant. Moreover, with respect to the Family Court, § 20-7-745, further states that

[s]ervice of summons and any process of the court shall be made as provided by law for service in the court of common pleas. Provided, that if the judge is satisfied that it is impracticable to serve personally the summons or the process, he may order service by registered or certified mail, addressed to the last known address, or by publication thereof, or both. It shall be sufficient to confer jurisdiction if service is effected at least forty-eight hours before the time fixed in the summons or process for the return thereof.

Service of summons, process or notice required by this chapter may be made by any suitable person under the direction of the court, and upon request of the court shall be made by any peace officer.

Furthermore, § 23-15-40 of the Code imposes upon a sheriff or his deputy the obligation to "... serve, execute and return every process, rule, order or notice issued by any court of record in this state"

In addition, we have consistently recognized that a Sheriff is the chief law enforcement officer of the county, an officer of the court, and as such is required to carry out and effectuate the Court's orders. See, Op. Atty. Gen., July 28, 1977 (Informal Opinion), referencing State v. Brantley, 279 S.C. 215, 305 S.E.2d 234 (1983). Nothing in these statutes, or the rulings of the South Carolina Supreme Court, suggest that the duties of a sheriff or his deputy, in executing an order of court, does not extend to an employer's place of business. To the contrary, it is generally recognized that a deputy must execute any order which is valid on its face. See, Op. Atty. Gen., March 13, 1996 (Informal Opinion) [deputy must execute valid on its face order of Family Court]; Op. Atty. Gen., November 13, 1984 [sheriff is obligated to serve the orders and process of Family Court].

An Opinion of the Oklahoma Attorney General is instructive with respect to this issue. In Op.No. 85-27 (October 31, 1985), the Oklahoma Attorney General recognized

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that "no statutes in Oklahoma ... enumerate where the sheriff may or may not go in order to execute process." Noting that sheriffs in Oklahoma (as in South Carolina) are common law officers, the Oklahoma Attorney General referenced Anderson on Sheriffs, § 6 where it is stated that

"It is not only the power, but the duty of sheriffs in their various jurisdictions ... to execute all process directed to [them] ... and to carry out the mandates, orders and directions of the courts."

The Oklahoma Attorney General also referenced an earlier opinion of his Office on the exact same question:

[i]n an Attorney General's opinion issued on July 27, 1949, to Mr. Charles F. Burns, County Attorney, Miami, Oklahoma, the identical question regarding execution of process on a person at his place of employment was addressed. It was the opinion of the Attorney General that "the sheriff, or his deputies, to whom process has been delivered for service is authorized to serve such process upon the person to whom same may be directed and may do so while such person is at work within the place of business of a private employer, even though such service may be contrary to the wishes of such employer."

It, therefore, appears under the foregoing authorities that a sheriff or his deputy who is armed with process is afforded protection under the law so that he is not considered a trespasser when he enters on private business property in order to execute process. To opine otherwise would be to render the sheriff incapable of carrying out his duties as required by 19 O.S.1981, § 514.

As stated above, a sheriff or his deputy is not authorized to use force in the execution of process unless there is specific statutory authority to do so. However, under 21 O.S.1981, § 540, any person who intentionally or willfully obstructs a public officer in the discharge of his duties, which would include execution of process, is in violation of the foregoing statute. Since the sheriff is not authorized generally

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to use force in the execution of process, resort should be had to this statute. Whether a particular situation is in violation of this statute is a question of fact which cannot be addressed in this opinion.

A similar analysis with respect to South Carolina statutes would, in my judgment, be applicable. Accordingly, a deputy sheriff would not be prohibited from executing or serving an order or process issued by the Family Court at an employer's place of business or business establishments. Whether or not, however, such service should or should not be done at such location in a given situation is a matter within the sheriff's discretion and exercise of sound judgment. Each situation would be unique, depending upon factors such as whether the individual could just as easily be served elsewhere, time constraints, etc. I make no judgment about the suitability of service at an employer's place of business in a given instance.

With respect to the question of whether an individual is "interfering" with the deputy's effort to serve process, I would direct you to a recent decision of the South Carolina Supreme Court, State v. Alls, 330 S.C. 528, 500 S.E.2d 781 (1998), a copy of which is enclosed for your information.

In Alls, the defendant was convicted in circuit court pursuant to § 16-5-50. There, two officers came to All's home to serve a Family Court bench warrant on her boyfriend for failure to pay child support. The officers knocked on Alls's apartment door for ten minutes until Alls finally came to the door. She informed the officer that the boyfriend was not there, but allowed them to look inside. The boyfriend was found hiding in a closet in the apartment. Alls claimed she did not know he was there.

The Supreme Court reversed the conviction on the basis that Alls was prosecuted under § 16-5-50 which the Court found "applies only to persons hindering the arrest of an individual charged with an offense against civil rights."

However, the Court also added that "All's should probably have been indicted under a different statute, such as S.C. Code Ann. § 16-9-320 (Supp.1997)" which provides as follows:

[i]t is unlawful for a person knowingly and wilfully to oppose or resist a law enforcement officer in serving, executing, or attempting to serve or execute a legal writ or process or to resist an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer, whether

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under process or not. A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned not more than one year, or both.

Thus, the Court declared this statute applicable where a person "knowingly and wilfully" opposes or resists a law enforcement officer in serving process. Of course, the conduct might be "knowingly and wilfully" in order for the statute to be violated. Accordingly, whether the statute is applicable in a given situation must be examined on a case-by-case basis.

In addition, the case of Gateway 2000, Inc. v. Limoges, 552 N.W.2d 591 (S.C. 1996) should be referenced. There, a corporation allowed the sheriff to routinely serve civil process on its employees by calling the employee to the visitor's entrance of the work facility. The company did not force the employee to accept service of process, but gave the employee the option of remaining at his or her work station or being served at the visitor's entrance. Subsequently, the sheriff insisted that he be allowed to go to the employee's work station and notified the company that any interference with his deputies' attempts to serve civil process would be met with prosecution for obstruction of justice.

The company sued the sheriff for declaratory and injunctive relief, alleging deprivation of constitutional rights to be free from unreasonable searches and seizures, denial of the right to privacy, as well as equal protection and due process. A reasonable expectation of privacy existed in the workplace beyond the visitor's center concluded the Court. In the Court's view, while the visitor's center was akin to the front porch of a home where persons inside could be called to the door, the work area was like the inside of the home. The Court reasoned that "[t]he employee work area is not open to the public and the closed door beyond the visitor center creates a threshold which the Sheriff cannot cross." Id. at 594. Moreover, the Court distinguished the service of civil process from a criminal action. Thus, the situation was not like one where the Sheriff was serving a criminal warrant. Finally, the Court noted that the Sheriff had presented no information that the employees could not be served at their homes, in the parking lot or the visitor's area. Thus, the Court concluded that the Sheriff's entry into the work area of the plant to serve process was unreasonable, that "Gateway does not give up its constitutional rights to maintain a private work area" and that an injunction should be granted against such entry in the future.

In summary, nothing in South Carolina law provides immunity for or prohibits service of process at an employer's place of business. Whether such service should be

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made or attempted at such location is, of course, a decision to be made within the sound judgment and discretion of the Sheriff. At the same time, at least one court has concluded that the employer maintains a constitutional right of privacy **in the private work area** and thus the Sheriff cannot serve process in such areas without the company's permission. This case holds that there must be found a balance between the right of privacy and the necessity to serve process. Accordingly, I would suggest that any effort to serve process must be made in the public area of a plant or workplace, or that the permission of the employer be sought if there is any attempt to serve such process in a private work area. Cooperation between the plant officials and the Sheriff is, therefore, strongly encouraged. As to any criminal prosecution pursuant to § 16-9-320, the interference must be deemed to have been done willfully and knowingly, and any successful prosecution would, of course, depend upon the particular facts and circumstances.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook

Assistant Deputy Attorney General

RDC/ph
Enclosure