

5166/5820



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

January 30, 1996

Jeffrey B. Moore, Executive Director  
South Carolina Sheriff's Association  
P. O. Box 21428  
Columbia, South Carolina 29221-1428

Re: Informal Opinion

Dear Mr. Moore:

You note that last year, the General Assembly enacted a new Harassment and Stalking law, Act No. 94 of 1995. As part of that enactment, a magistrate is given jurisdiction over an action seeking a restraint order against a person engaged in harassment or stalking. You wish to know who is required or authorized to serve this order.

Act No. 94 of 1995 is codified at S. C. Code Ann. Sec. 16-3-1700 et seq. Section 16-3-1700 defines "harassment" and "stalking" and Sections 16-3-1710 and -1720 create criminal offenses for such conduct and establish penalties therefor.

Section 16-3-1750 also creates an action in magistrate's court enabling a person to seek a restraining order against an individual who may be harassing or stalking that person. Service of the restraining order is provided for in Section 16-3-1790. That Section states:

[t]he magistrate's court shall serve the defendant with a certified copy of an order issued pursuant to this article and provide a copy to the plaintiff and to the local law enforcement agencies having jurisdiction over the area where the plaintiff resides. Service must be made without charge to the plaintiff.

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Section 16-3-1800 further provides:

[l]aw enforcement officers shall arrest a defendant who is acting in violation of a restraining order after service and notice of the order have been provided. An arrest warrant is not required.

I assume your question centers in large part upon the duty of sheriffs and their deputies in this instance. Section 23-15-40 provides as follows:

[t]he sheriff or his regular deputy, on the delivery thereof to him, shall serve, execute and return every process, rule, order or notice issued by any court of record in this State or by other competent authority.

We have interpreted this provision on a number of occasions. For example, in an Opinion dated December 18, 1990, we stated:

[w]hile this Office has recognized in a prior opinion dated September 24, 1981 that a magistrate's court is not a court of record, it appears that a magistrate could be considered "other competent authority." See: Opinion of the Atty. Gen. dated September 18, 1985 ("As the chief law enforcement officer of the county, the sheriff has historically been mandated to serve process issued by all courts of record "or by other competent authority.")

In Rogers v. Marlboro County, 32 S.C. 555, 558, 11 S.E. 383 (1890) the State Supreme Court indicated as to a sheriff's responsibilities,

When a warrant is placed in his hands by proper authority, his duty is to execute it, or attempt to do so. It is no part of his duty to inquire whether the prosecution is well founded, either in law or fact, and it would be impertinent in him to do so ... . [and, quoting Bragg v. Thompson, 19 S.C. at 76]

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The sheriff is a ministerial officer. He is neither judge nor lawyer. It is not his duty to supervise and correct judicial proceedings; but being an officer of court, ministerial in character, he cannot impugn its authority nor inquire into the regularity of its proceedings. His duty is to obey. This principle applies alike to him, whether the execution issues from a court of general or limited jurisdiction.

Therefore, generally a law enforcement officer acts as a ministerial officer in executing a warrant valid on its face. Bennett v. City of Grand Prairie, 883 F.2d 400 (5th Cir. 1990).

Moreover in Op. No. 85-103 (September 18, 1985), we commented:

[o]f course, while a constable may have been the principal officer who executed process issued by magistrates, see, e.g., Act No. 300 of 1870 (§ 74), such authority has not by any means been limited exclusively to constables. As the chief law enforcement officer of the county, the Sheriff has historically been mandated to serve process issued by all courts of record "or by other competent authority." See Act No. 2780 of 1839, now codified in § 23-15-40 of the 1976 Code; undoubtedly, the phrase "other competent authority" includes a magistrate's court. The Sheriff has often been deemed as an officer supplementary to or even as a replacement for, the constable. See e.g. §§ 53-195 and 53-151 of the 1962 Code.

And in an Opinion, dated February 9, 1973, we referenced § 23-15-40. We stated:

[u]nder the provisions of the foregoing statute, a county sheriff would be under a duty to execute bench warrants issued by magistrates in the circumstances set forth - unless the sheriff of a particular county is exempted by special statute from the operation of the Section.

I see nothing in the new Stalking and Harassment Law which would dictate a contrary conclusion. Section 16-3-1790 does state that "the magistrate's court shall serve

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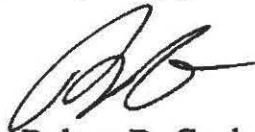
the defendant with a certified copy of an order issued pursuant to this article" as well as providing a copy to the plaintiff and "to the local law enforcement agencies having jurisdiction over the area where the plaintiff resides." Obviously, however the court would have to use either a magistrate's constable or sheriff's deputy to accomplish such service. Many counties no longer utilize magistrates' constables. Clearly, moreover, the sheriff is an officer of the court, whether it is a court of general or limited jurisdiction. Rogers v. Marlboro County, supra; State v. Brantley, 279 S.C. 215, 305 S.E.2d 234 (1983).

Thus, it is my opinion that the County Sheriff would be required to serve the restraining order against stalking or harassment where issued by the magistrate's court and placed in the Sheriff's hands for service.

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