

1984 WL 249987 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 2, 1984

*1 J. Leon Gasque
Captain
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221

Dear Captain Gasque:

You have asked the opinion of this Office in construing a portion of [Section 7-17-560, Code of Laws of South Carolina \(1976\)](#). In particular, you wish to know whether officials of the State Law Enforcement Division may serve candidates with copies of protests and hearing notices in place of the chairman of the State executive committee. It is the opinion of this Office that duly authorized officials of the State Law Enforcement Division probably would not be prohibited from so acting by the provisions of [Section 7-17-560 of the Code](#).

It has long been the opinion of this Office that the State executive committee, rather than the county executive committee, hears protests and contests from State Senate races. See Op. Atty. Gen. No. 2076, dated June 16, 1966. With regard to such protests and contests, [Section 7-17-560](#) provides that

[t]he chairman of the [State executive] committee shall forthwith serve upon each candidate in the protested race a copy of the protest and serve a notice of the time and place of the meeting of the committee for the purposes of hearing the protest.

The question you have raised is whether the chairman of the State executive committee must personally serve each candidate, or whether he may appoint a deputy to so serve in his behalf.

An officer who is authorized by law to serve legal process may appoint a special deputy to execute a particular process, without any express authority derived from statute or otherwise. 72 C.J.S., Process, § 29. Relative to the service of process, any action which an official is authorized by statute to take may be taken by the official or by a deputy. [Aversa v. Aubry](#), 303 Pa. 139, 154 A. 311 (1931). Furthermore, '[e]xcept as otherwise provided by statute, service may be made by an officer's deputy with the same effect as by the officer himself.' 72 C.J.S., Process, § 28a; [Aversa v. Aubry](#), *supra*. Applying this general law to the situation you have presented, no statute appears to prohibit the chairman's appointment of a deputy to serve legal process as contemplated by [Section 7-17-560](#). Appointment of officials of the State Law Enforcement Division would appear to be proper.

It should be noted that the schedule for lodging and resolving Senate primary election protests has been shortened to allow for resolution of protests prior to the holding of runoff elections on October 11. A logistical problem could easily be presented if numerous protests involving different geographic areas were lodged; it could conceivably not be possible for the chairman of the State executive committee to serve the required process upon each candidate involved in a protest if he were required to do so personally. Use of officials from the State Law Enforcement Division as deputies of the chairman to serve process would keep such an important governmental function within the government, in addition to allowing all candidates to be served in a timely manner.

*2 In conclusion, if officials from the State Law Enforcement Division were to be appointed as deputies by the chairman of a State executive committee, to serve legal process, such appointment would probably not be prohibited by state law.

Sincerely,

Patricia D. Petway
Assistant Attorney General

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