

1977 S.C. Op. Atty. Gen. 140 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-181, 1977 WL 24523

Office of the Attorney General

State of South Carolina

Opinion No. 77-181

June 8, 1977

*1 Francis Coath,
Chief Deputy
Allendale County Sheriff's Department
Allendale, SC 29810

Dear Chief Deputy Coath:

You have requested an opinion as to whether a Deputy Sheriff has power to employ deputies when the sheriff is unable to 'speak a word and is totally paralyzed.'

Section 53-55, Code of Laws of South Carolina (1962), states:

In the event that any vacancy shall, at any time, occur in the office of sheriff in any county of this State, the Governor may appoint some suitable person, who shall be an elector of such county and who, upon duly qualifying, according to law, shall be entitled to enter upon and hold the office until the next general election for county sheriffs and shall be subject to all duties and liabilities incident to such offices during the term of his service in such office. [emphasis added].

I am unable to find any provision of law stating that incapacity amounts to a 'vacancy' within the meaning of the statute. However, § 1-124 Code of Laws of South Carolina (1962) provides for the removal, after a hearing, of any officer elected or appointed to a public office 'the duties of which he has not the capacity properly to discharge.' Such removal rests in the discretion of the Governor.

Until the Governor takes appropriate action, however, the official in question is still the Sheriff. Only the Sheriff may appoint or hire new deputies; therefore, a deputy sheriff may not exercise this authority. 1962-63 Ops. Atty. Gen. No. 1557, p. 127.

Once the Governor removes the Sheriff, a vacancy exists in the office of Sheriff and the Governor may then appoint pursuant to § 53-55, above, someone to fill the vacancy.

Between the time the Governor has removed the present Sheriff and before he has appointed someone to fill the vacancy, § 53-58 provides that the Coroner 'shall assume the office, discharge its duties, incur its liabilities and be entitled to its fees and emoluments.'

Therefore, it is the opinion of this office that the Chief Deputy Sheriff may not employ deputies under the conditions you set forth.

Sincerely,

Joseph C. Coleman
Deputy Attorney General

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