

1978 S.C. Op. Atty. Gen. 151 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-117, 1978 WL 22586

Office of the Attorney General

State of South Carolina

Opinion No. 78-117

June 20, 1978

*1 Without other specific authority permitting such, a sheriff or magistrate's constable is without authority to make forcible entry to accomplish an ejectment. This conclusion is also buttressed by the fact that under the earlier ejectment statutes before the 1946 Act which serves as basis for [Sections 27-37-10, et seq., Code of Laws of South Carolina](#), 1976 the use of such force as necessary to accomplish ejectment was authorized. However such a provision was not included in the present statute. Furthermore, entry where a tenant is absent from the premises.

Assistant Director
South Carolina Supreme Court Administration
P. O. Box 11788
Columbia, S. C. 29211

Dear Neal:

You have asked the opinion of this Office on the following question:

Can a warrant of ejectment be executed pursuant to the provisions of Section 27-37-40 in the absence of the defendant tenant and, if necessary, can the constable or sheriff make forcible entry into the premises to accomplish the ejectment?

[Section 27-37-40, Code of Laws of South Carolina](#), 1976, states

if the tenant fails to appear and show cause within the aforesaid ten days . . . (why he should not be ejected) . . . then the magistrate shall issue a warrant of ejectment and the tenant shall be ejected by his regular or special constable or by the sheriff of the county.

As can be seen, the above statute itself does not grant authority to the constable or sheriff to forcibly enter to eject a particular tenant. A previous opinion of this Office, 1964 Ops. Att'y Gen., No. 1720, p. 196 indicated that: a sheriff, regular deputy sheriff, or magistrate's constable is empowered by statute to break and enter dwelling houses in claim and delivery actions if entrance can be gained in no other reasonable manner, and after demand for admittance has been made and refused.

Furthermore, the Opinion stated:

It is to be stressed that it is only by virtue of the statutes cited . . . that an officer is permitted to break open, after proper demand, the outer door of a dwelling house. Under the common law rule he could not do so without committing trespass . . . The authority conferred on the sheriff by Section 10-2513 . . . (now [Section 15-69-180 of the 1976 Code](#)) . . . and on the magistrate's constable by Section 43-176 . . . (now [Section 22-3-1320 of the 1976 Code](#)) applied in claim and delivery actions only and not to any other civil process unless specifically conferred by the General Assembly in other statutes. (Emphasis added)

Therefore, without other specific authority permitting such, a sheriff or magistrate's constable is without authority to make forcible entry to accomplish an ejectment. This conclusion is also buttressed by the fact that under the earlier ejectment statutes before the 1946 Act which serves as the basis for [Sections 27-37-10, et seq., Code of Laws of South Carolina](#), 1976 the use of such force as necessary to accomplish ejectment was authorized. However such a provision

was not included in the present statute. Furthermore, there are no statutory provisions permitting forcible entry where a tenant is absent from the premises.

*2 It is the recommendation of this Office that in a situation involving resistance by a tenant or where there are special problems, such as infants, incapacitated persons, sick persons, or senile persons on the premises, any attempt to forcible eject these tenants should only be made pursuant to an order of a circuit court. Presumably the interests of these particular tenants would be protected and represented prior to any such order of the court being issued.

With best wishes, I am

Very truly yours,

Charles H. Richardson
Assistant Attorney General

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