

1978 S.C. Op. Atty. Gen. 173 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-140, 1978 WL 22608

Office of the Attorney General

State of South Carolina

Opinion No. 78-140

July 20, 1978

**\*1 SUBJECT: Investigators, Private.**

(1) [Section 40-17-140\(12\) South Carolina Code \(1976\)](#) protects against fraudulent and deceitful acts by licensees under the Private Detectives and Private Security Agencies Act.

(2) [Section 40-17-140\(12\) South Carolina Code \(1976\)](#) does not prohibit the licensee from serving valid legal process prepared in the office of an attorney-at-law.

TO: Chief J. P. Strom  
South Carolina Law Enforcement Division

QUESTIONS:

Whether a licensee under [Section 40-17-10 South Carolina Code \(1976\)](#) is prohibited from serving papers in legal proceedings which are prepared in the office of an attorney-at-law?

STATUTES AND CASES:

Title 40 Chapter 17 Detective and Private Security Agencies, South Carolina Code of Laws (1976) and Section 15-9-40.

62 Am Jur 2d Process, Section 32.

[Plano Mfg Co. v. Murphy](#), 16 S.D. 380, 98 N.W. 1072.

[Rutherford v. Moody](#), 59 Ark. 328, 27 S.W. 230.

[Williams v. Ray](#), 232 S.C. 373, 102 S.E.2d 368 (1958).

Black's Law Dictionary.

DISCUSSION:

1. [Section 40-17-140\(12\) South Carolina Code \(1976\)](#) provides, in part that:

... [SLED] may, after hearing, suspend or permanently revoke a license or registration . . . if it determines that the holder of such license or registration has:

(12) Undertaken to give legal advice or counsel or to in anywise represent that he is representing any attorney or is appearing or will appear in any legal proceedings or to issue, deliver or utter any simulation of process of any nature which might lead a person to believe that such simulation, written, printed or typed, may be a summons, warrant, writ or court process or any pleading in any court proceeding.

A close examination of the statute indicates the prohibited acts are those which could be mistaken for acts which have behind them the force of law or authority. That is the licensee cannot give legal advice nor can he represent himself to be acting in behalf of an attorney nor can he issue, deliver or utter any simulation of process . . . , etc.

It seems the concern of the Legislature was to protect persons against fraudulent or deceitful acts by the licensee which have the appearance of legal import.

The specific question herein to be answered deals with the proscription against issuing, delivering or uttering any simulation of process. A distinction can be made between 'issuing', etc., genuine versus simulated process. Black's Law Dictionary defines 'simulation' as the 'assumption of appearance which was feigned, false, deceptive, or counterfeit.'

Thus, if the licensee seeks to deceive the public by representing his acts to have legal consequence or where the licensee issues, utters or delivers a paper which appears to have legal consequence when, in fact, neither is the case, the licensee would be in violation of this section.

There is nothing inherently wrong with someone other than a sheriff delivering a summons or other process. The South Carolina Code plainly allows a summons to be served 'by the sheriff of the county in which defendant may be found, or by any other person not a party to the action'<sup>1</sup>, [South Carolina Code \(1976\) Section 15-9-40](#).

\*2 As a general rule the law does not allow a person to execute process in his own favor. The idea is that the law will only entrust service of process to those free from bias and acrimony so frequently arising from litigation. 62 Am Jur 2d Process, Section 32. The question as to whether this prohibition by necessary implication includes the agent or attorney of a party has been answered in the affirmative, [Rutherford v. Moody](#), 59 Ark. 328, 27 S.W. 230 and the negative, [Plano Mfg Co. v. Murphy](#), 16 S.D. 380, 92 N.W. 1072.

The South Carolina Supreme Court found effective service under the statute was had when a secretary employed by plaintiff's counsel delivered the summons. [Williams v. Ray](#), 232 S.C. 373, 102 S.E.2d 368 (1958).

Therefore where the licensee is not a party to the action and is acting in good faith within his scope he is not prohibited from serving valid legal process.

#### CONCLUSION:

(1) [Section 40-17-140\(12\) South Carolina Code \(1976\)](#) protests against fraudulent and deceitful acts by licensees under the Private Detectives and Private Security Agencies Act.

(2) It does not prohibit licensees from serving valid legal process prepared in the office of an attorney-at-law.

Buford S. Mabry, Jr.  
Staff Attorney

#### Footnotes

<sup>1</sup> Although Section 40-17-130 confers the power of sheriffs to make arrests upon licensees of this act, that power is apparently only to enforce the criminal law and is confined to the property under the licensee's protection. Therefore Section 40-17-130 is inapplicable to this issue.

1978 S.C. Op. Atty. Gen. 173 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-140, 1978 WL 22608

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.