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**ARIZONA ATTORNEY GENERAL**

Opinion No. 63-8  
R-75  
December 20, 1962

REQUESTED BY: THE HONORABLE ALVIN WESSLER  
House of Representatives

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

QUESTION: Is it lawful for a constable of a precinct including a part of the city to serve Superior Court process after hours as a private process server in accordance with Rule 4(d) of the Rules of Civil Procedure, and receive fees therefor?

ANSWER: No.

In our letter opinion No. 62-58-L we gave our opinion ". . . that the constable's job, precisely like the deputy sheriff's job, requires, during his working hours, exclusive attention to the work for which he receives his salary, and that his receipt of fees for services rendered as a private process server is within the prohibition of Article 22, Sec. 17, Constitution of the State of Arizona, . . ." On the face of the present question we recognize that there are many instances when service of process can only be made during the regular daytime office hours. These instances include service upon federal, state, county and city governmental agencies.

The present question is distinguishable from the question which brought forth our opinion cited heretofore in that this question limits the private process service to the constable's "after-hours time". We are then confronted with the question what are the working hours of a constable?

Section 22-131, A.R.S. lists the duties of constables as follows:

"A. Constables shall attend the courts of justices of the peace within their precincts when required and within their counties execute, serve and return processes and notices directed or delivered to them by a justice of the peace of the county or by competent authority.

B. The provisions of law relating to sheriffs, so far as applicable, shall govern the powers, duties and liabilities of constables."

Section 11-441 lists the powers and duties of the sheriff as follows:

"A. The sheriff shall:

1. Preserve the peace.
2. Arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense.
3. Prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge.
4. Attend all courts, except justice and police courts, at their sessions held within the county, and obey their lawful orders and directions.
5. Take charge of and keep the county jail and the prisoners therein.
6. Endorse upon all process and notices the year, month, day, hour and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper and time of reception.
7. Serve process and notices in the manner prescribed by law and certify under his hand upon the process or notices the manner and time of service, or if he fails to make service, the reasons for his failure, and return them without delay. When returnable to another county, he may enclose such process or notices in an envelope, addressed to the officer from whom received, and deposit it prepaid in the post office. The return of the sheriff is prima facie evidence of the facts stated in the return.

B. The sheriff may in the execution of the duties

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prescribed in paragraphs 1 to 4, inclusive, subsection A, command the aid of as many male inhabitants of the county as he deems necessary.

It appears from the foregoing statutes that a constable may be required to attend the courts of the justice of the peace and to serve and return processes and notices directed or delivered to them by a justice of the peace or by competent authority and this does not have a limitation in time. In other words it is conceivable that in fulfilling the requirement of serving and returning a process it would be necessary to do so during hours other than what is usually considered as regular office hours. Further a constable may be required to preserve the peace and to make arrests and to perform other duties of a peace officer. These duties are certainly not limited to the eight hours of a regular office day. To the contrary, it appears that the duties of a constable as do the duties of a sheriff place him on call for a twenty-four hour period. In attempting to serve as a private process server a constable might, therefore, very probably find such activity incompatible and in conflict with the duties placed upon him by reason of his public office.

It is therefore, the opinion of our office that a constable of a justice court precinct may not serve superior court process after hours as a private process server.

*Robert W. Pickrell*  
ROBERT W. PICKRELL *by wee*  
The Attorney General

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