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OFFICERS:

Extent to which Coroner, Acting as Sheriff when the Sheriff is Interested or Otherwise Disqualified, is Authorized to Serve Summons, Execution, or Other Process on a Civil Action

Honorable Peter J. Woods
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Dear Mr. Woods:

I have your letter wherein you state:

"To what extent is the coroner allowed, in his capacity as coroner, to serve complaints, etc. on civil actions when the office of sheriff is not vacant."

When the office of sheriff is vacant, it is clear that the coroner has the authority to perform all the duties required by law to be performed by the sheriff and has the

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same powers as the sheriff. (Ill. Rev. Stat. 1973, ch. 31, par. 9.) Your question, however, is expressly limited to the situation where the office of sheriff is not vacant.

Section 7 of "AN ACT to revise the law in relation to coroners" (Ill. Rev. Stat. 1973, ch. 31, par. 7), specifies when the coroner is to act as sheriff even though the office of sheriff is occupied and provides:

"When it appears from the papers in a case that the sheriff or his deputy is a party thereto, or from affidavit filed that he is interested therein, or is of kin, or partial to or prejudiced against either party, the summons, execution or other process may be directed to the coroner, who shall perform all the duties in relation thereto, and attend to the suit in like manner as if he were sheriff; and the interests, consanguinity, partiality or prejudice of the sheriff shall not be cause for a change of venue."

In Gilbert v. Gallup, 76 Ill. App. 526, the court merely cited the language of section 7 of "AN ACT to revise the law in relation to coroners", supra, and further noted that the statute recognizes that one interested in a case might be oppressively zealous.

In People v. Clampitt, 362 Ill. 534, a criminal case, a judge entered an order directing venire to issue for jurors

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and ordered the clerk to issue it to the coroner of the county. The defendant challenged the array contending that the court had no power to issue the venire to the coroner since the sheriff was not disqualified. The court construed the pertinent statute, which provided that the venire shall be delivered to the sheriff or coroner, to mean that the venire could be delivered to the coroner only under the circumstances prescribed in section 7 of "AN ACT to revise the law in relation to coroners", supra. Since the sheriff was present in court and in no way disqualified, the court held that it was mandatory that the sheriff perform the duty of summoning the jurors.

Your question is the extent to which the coroner may serve summons, execution, or other process in a civil case. Section 7 of "AN ACT to revise the law in relation to coroners", supra, expressly provides that, when the coroner must act as sheriff pursuant to said section, said coroner shall perform all the duties in relation to summons, execution, or other processes directed to him and attend to the suit in like manner as if he were sheriff.

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In regard to the sheriff's duty, section 15 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1973, ch. 125, par. 15), provides in pertinent part:

"Sheriffs shall serve and execute, within their respective counties, and return all writs, warrants, process, orders and decrees of every description that may be legally directed and delivered to them.

* * * *

It is therefore my opinion that, when the coroner acts as the sheriff pursuant to section 7 of "AN ACT to revise the law in relation to coroners", supra, he is authorized to serve summons, execution, or other process directed to him in a civil action in like manner as if he were sheriff.

Such a construction is supported by other pertinent statutory provisions. Section 13.1 of the Civil Practice Act (Ill. Rev. Stat. 1973, ch. 110, par. 13.1), provides:

"(1) Writs shall be served by a sheriff, or if he is disqualified, by a coroner of some county of the State. The court may, in its discretion upon motion, order service to be made by a private person over 21 years of age and not a party to the action. It is not necessary that service be made by a sheriff or coroner of the county in which service is made. If served or sought to be served by a sheriff or coroner, he shall endorse his return thereon, and if by

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a private person the return shall be by affidavit.

(2) Summons may be served upon the defendants wherever they may be found in the State, by any person authorized to serve writs. An officer may serve writs of summons in his official capacity outside his county, but fees for mileage outside the county of the officer cannot be taxed as costs. The person serving the writ in a foreign county may make return by mail.

(3) If any sheriff, coroner, or other person to whom any process is delivered, neglects or refuses to make return of the same, the plaintiff may petition the court to enter a rule requiring the sheriff, coroner, or other person, to make return of the process on a day to be fixed by the court, or to show cause on that day why he should not be attached for contempt of the court. The plaintiff shall thereupon cause a written notice of the rule to be served on the sheriff, coroner, or other person. If good and sufficient cause be not shown to excuse the officer or other person, the court shall adjudge him guilty of a contempt, and shall proceed to punish him as in other cases of contempt."

In addition, the coroner is authorized to serve writs of attachment when the sheriff is interested or otherwise disqualified or prevented from acting. Ill. Rev. Stat. 1973, ch. 11, par. 6.

Very truly yours,

A T T O R N E Y G E N E R A L