



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

November 19, 2013
OPINION 13-0107

57 JUSTICES OF THE PEACE
107 SHERIFFS - Constables & Marshals, including Ex-Officio Tax
Collectors, rights, powers & duties, in general

Honorable Connie Moore
Justice of the Peace
73477 Tammy Lane
Covington, Louisiana 70435

La. Const. Art. 5, § 20; La. C.C.P. art. 321; La. C.C.P. art. 331; La.
C.C.P. art. 332; La. C.C.P. art. 325; La. R.S. 13:1881; and La. R.S.
13:3478

A constable of a justice of the peace court does not have the authority
to use a locksmith to obtain entry into a locked building when
executing a writ issued by a justice of the peace court.

Dear Ms. Moore:

You have requested an opinion of the Attorney General as to whether a constable of a justice of the peace court may use a locksmith to obtain entry to a locked building when executing a writ issued by a justice of the peace court. Your request has been assigned to me for research and reply.

Justice of the peace courts are provided for in the Louisiana Constitution of 1974, Article 5, Section 20. A constable serves as the legal officer for the justice of the peace court.¹ He is the authorized officer to execute and serve all orders and writs issued by the justice of the peace of his particular ward or district.²

Similarly, the sheriff is the executive officer of the district court.³ La. C.C.P. art. 321 states that the sheriff "shall serve citations, summons, subpoenas, notices, and other process, and shall execute writs, mandates, orders, and judgments directed to him by the district courts, the courts of appeal, and the supreme court." Pursuant to La. C.C.P. art. 325, the sheriff, if necessary to effect entry, may break open any door or window in the execution of a writ, mandate, order, or judgment of a court. It is the opinion of this office that La. C.C.P. art. 325 gives the sheriff the authority to use a locksmith to gain entry to a locked building in order to execute writs, mandates, orders, and judgments directed to him by the district courts, the courts of appeal, and the supreme court.

However, as this article is specific to sheriffs, the question now turns to whether the same authority is given to constables of justice of the peace courts. La. C.C.P. art. 331 states that "a deputy sheriff possess all the powers and authority granted by law to the sheriff, and may perform any of the duties and exercise any of the functions of the sheriff." Additionally, La. R.S. 13:1881(A) provides that "marshals of city courts have

¹ See La. R.S. 13:3478; See also La. Atty. Gen. Op. No. 77-320.

² La. R.S. 13:3478.

³ La. C.C.P. art. 321.

the same powers and authority of a sheriff when executing orders and mandates of city court.”⁴ No similar state law exists applicable to constables of justice of the peace courts. Had the legislature intended to give the constables of justice of the peace courts the same powers and authority of sheriffs, it could have done so through legislation.

Therefore, it is the opinion of this office that constables of justice of the peace courts do not have the authority to break open any door or window in the execution of a writ, mandate, order, or judgment of the justice of the peace court. As such, constables of justice of the peace courts do not have the authority to use a locksmith to obtain entry to a locked building when executing a writ issued by a justice of the peace court. However, we acknowledge the authority of the legislature to enact legislation which would grant constables of justice of the peace court the same authority as sheriffs and city marshals in the execution of a writ, mandate, order, or judgment.

Finally, we note a limited exception to the above stated law and direct your attention to La. C.C.P. art. 332, which provides that constables of justice of the peace courts may be authorized by the sheriff to serve the processes of the district court.⁵ In so doing, constables are provided the same powers and authority as the sheriff.⁶ This could include the authority to break open any door or window as provided for in La. C.C.P. art. 325. However, this exception only applies when constables of justice of the peace courts are serving processes of the district court within the territorial jurisdiction of their justice of the peace wards or districts at the request of the sheriff.

In conclusion, it is the opinion of this office that, generally, constables of justice of the peace courts do not have the authority to break open any door or window when executing a writ issued by a justice of the peace court. As such, a constable of justice of the peace court may not use a locksmith to obtain entry into a locked building when executing a writ issued by a justice of the peace court. However, when authorized by the sheriff to serve the processes of the district court, constables of justice of the peace courts have the same powers and authority as a sheriff within the territorial jurisdiction of their justice of the peace ward or district.

⁴ See La. R.S. 13:1881(A) which states “[t]he marshal is the executive officer of the court; he shall execute the orders and mandates of the court and in the execution thereof, and in making arrests and preserving the peace, he has the same powers and authority of a sheriff.”

⁵ See La. C.C.P. art. 332.

⁶ *Id.*

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: Erin C. Day
Erin C. Day
Assistant Attorney General

JDC:ECD/spr