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STATE OF ALABAMA
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Honorable Jeffrey A. Wood
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Subpoenas – Service of Process and
Summons – Minors – Witnesses – Schools

A subpoena in a juvenile delinquency proceeding may be served on a minor witness at school. Schools, however, may reasonably restrict the time, location, and manner in which such service is perfected.

Dear Mr. Wood:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Is it lawful for law enforcement to serve a subpoena on a minor witness at school during school hours? Or, should this process be served on the parent at his or her dwelling place?

FACTS AND ANALYSIS

Your request states that an attorney issued subpoenas on minor witnesses in a juvenile delinquency case using a school address.

The Alabama Rules of Juvenile Procedure do not address subpoenas. Rule 1, governing general procedure, provides that “[i]f no procedure is specifically provided in these Rules or by statute, . . . the Alabama Rules of Criminal Procedure shall be applicable to those matters that are considered criminal in nature.” ALA. R. JUV. P. 1(A). The comment to the Rule clarifies that the

Alabama Rules of Criminal Procedure (“Criminal Rules”) apply to delinquency cases. ALA. R. JUV. P. 1 cmt.

Rule 17.4 of the Criminal Rules specifically provides for service of subpoenas. It permits service by mail or personal service. ALA. R. CRIM. P. 17.4(a). Rule 17.4(c)(2) covers service by certified mail, merely stating that “[t]he sheriff shall place a copy of the subpoena to be served in an envelope and shall address the envelope to the person to be served.” ALA. R. CRIM. P. 17.4(c)(2). Rule 17.4(d)(2) covers personal service, stating only that service may be made on the witness “personally.” ALA. R. CRIM. P. 17.4(c)(2). Rule 17.4(d)(2) additionally allows a limited exception for service at the home of a witness. As this Office has explained, a subpoena served at the residence of a witness must be left with a person of suitable age and discretion living there. Opinion to Honorable David Barber, District Attorney, dated February 23, 2004, A.G. No. 2004-075.

Neither of these provisions makes special accommodation for minors or prohibits locations where a witness may be served. Moreover, this Office has considered a similar issue under the equally broad language governing service of a summons in a civil case. Opinion to Honorable J. Harold Richards, Sheriff, DeKalb County, dated February 23, 1989, A.G. No. 89-00201. That opinion addressed service on a defendant while the defendant was at the courthouse on an unrelated criminal charge pursuant to Rule 4 of the Alabama Rules of Civil Procedure. The *Richards* opinion concluded that a summons could be served anywhere in the state, including a courthouse. ALA. R. CIV. P. 4. Based on these authorities, a subpoena in a juvenile delinquency proceeding may be served on a minor witness at school.

Local boards of education maintain broad general authority over the administration and supervision of local schools, including the authority to prescribe regulations governing the operation of local schools. ALA. CODE §§ 16-1-30, 16-8-8, 16-11-9 (2001). Public schools have traditionally enjoyed authority to regulate access to school students during the course of the day so as to minimize disruption to the school’s academic program.

Our conclusion that process servers may lawfully serve a subpoena on a minor at school would not necessarily preclude reasonable restrictions regarding the time, place, and manner of service so as to protect the school’s legitimate interest in the orderly administration of its affairs. Such restrictions, however, could not be designed or applied in a way that would frustrate service of the subpoena.

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CONCLUSION

A subpoena in a juvenile delinquency proceeding may be served on a minor witness at school. Schools, however, may reasonably restrict the time, location, and manner in which such service is perfected.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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