S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 Fifth Avenue North
P. O. Box 20207
NASHVILLE, TENNESSEE

September 24, 2001

Opinion No. 01-149

Authority of a private business to refuse to allow a private process server or a sheriff from proceeding onto its business property to serve civil papers.

QUESTION

May a private business refuse access onto its property to a private process server or a sheriff who is attempting to serve civil papers?

OPINION

A private business may refuse access to the private areas of its business property to a private process server or a sheriff who is attempting to serve civil papers, but may not refuse access to areas open to the public.

ANALYSIS

Service of civil process may not be accomplished except as authorized. Tenn. R. Civ. P. 4.04 and 4.05. This rule does not abrogate the Fourth Amendment rights of the defendant, who is being served, "against unreasonable intrusions by the State." *Gateway 2000, Inc., v. Limoges*, 552 N.W. 2d 591, 592 (S.D. 1996) (attached).

"[B]usiness premises are also protected by the Fourth Amendment." *Id.* at 593 (citing *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 353, 97 S.Ct. 619 629, 50 L.Ed.2d 530, 544 (1977)) (attached). Service of civil papers "may be served by any person who is not a party and is not less than 18 years of age." Tenn. R. Civ. P. 4.01(2). Service of civil papers does not provide for access to private areas. Tenn. R. Civ. P. 4. However, there is no justification for excluding a sheriff or a process server from the public area of a business, during periods when the business is open to the public. *See G.M. Leasing Corp. v. United States*, 429 U.S. 338, 353, 97. U.S. 619, 629, 50 L.Ed.2d 530, 544 (1977).

It is, therefore, the opinion of this Office that a private business may refuse to allow a sheriff or a private process server from proceeding to a private area of its business property, but not from a public area of its business property.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ELLEN H. POLLACK
Assistant Attorney General

Requested by:

State Senator Stephen I. Cohen
30th Senatorial District
349 Kenilworth Place
Memphis, TN 38112