

7258 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 16, 2001

Stephen M. Pstrak, Esquire
Town Attorney & Prosecutor
Town of Gilbert
100 Harmon Street
Lexington, South Carolina 29072-3554

Dear Mr. Pstrak:

By your letter of October 3, 2001, you have requested an opinion of this Office concerning the enforceability of a South Carolina state court subpoena served outside the borders of the state. In short, a South Carolina summons served on an out of state witness or document is ineffectual as a subpoena because the courts of this state are without jurisdiction over persons or property outside of its territory. John Deere Co. v. Cone 239 S.C. 597, 124 S.E.2d 50 (1962) (citing Pennoyer v. Neff, 95 U.S. 714 (1877); Tillinghast v. Boston & P. R. Lumber Co., 39 S.C. 484, 18 S.E. 120 (1893)).

In order to serve witnesses or documents in foreign jurisdictions, the appropriate course of action would be to request a court of that jurisdiction issue the subpoena in accordance with that state's rules of civil procedure. By way of analogy, Rule 28(d) of the South Carolina Rules of Civil Procedure provides for depositions or productions of documents in South Carolina for use in an out-of-state proceeding. Courts in other jurisdictions certainly have similar court rules that would provide guidance to a party seeking to compel the testimony of witnesses or documents in that state.

With kind regards, I remain

Very truly yours,

Susannah Cole
Assistant Attorney General

Resubmit Letter