

JUNE 13, 1957

HONORABLE EDWARD J. PATTEN  
*Secretary of State*  
State House  
Trenton, New Jersey

## FORMAL OPINION, 1957—No. 7

DEAR SECRETARY PATTEN :

We have your request for an opinion as to whether you are authorized to accept service of a summons and complaint against a corporation in instances where by statute service of process may be made upon the Secretary of State. The legal issue of the applicability of R.R. 4:4-6 is thus raised. R.R. 4:4-6 provides:

“A general appearance or an acceptance of the service of the summons, signed by the defendant’s attorney or signed and acknowledged by the defendant, shall have the same effect as if the defendant had been properly served.”

Service of process on the Secretary of State or the chief clerk in his office in actions against a domestic corporation or a foreign corporation authorized to transact business in the state is authorized pursuant to N.J.S. 2A :15-26, under the following circumstances :

“a. The corporation has failed to file the annual report required by section 14:6-2 of the title, Corporations, General, of the Revised Statutes, within the time thereby required; or

“b. The corporation has failed to establish or has ceased to maintain a principal office in this state with a designated agent in charge thereof, upon whom process against the corporation may be served, as required by section 14:4-2 of the title, Corporations, General, of the Revised Statutes; or

“c. The designated agent upon whom process against the corporation may be served has died, resigned, become disqualified or has removed from this state, or can not, with due diligence, be found therein; or

“d. The corporation, when the agent designated pursuant to section 14:4-2 of the title, Corporations, General, of the Revised Statutes, has died, resigned, removed from the state or has become disqualified, has failed to file the certificate containing the name of a new agent upon whom process against the corporation may be served as required by section 14:4-5 of the title, Corporations, General, of the Revised Statutes, and the corporation’s certificate of authority to transact business in this state has been revoked by the secretary of state as provided by said section 14:4-5, in which case process against the corporation in an action upon a liability incurred within this state may be served upon the secretary of state or his chief clerk as herein provided.”

Similar provision for service on the Secretary of State in actions against dissolved corporations is found in R.S. 14:13-14. This statute is as follows:

“In any action or other legal proceeding commenced in any court of this State against a domestic or foreign corporation, or to which such corporation shall be a party defendant, where the charter of the corporation has hereto-

fore expired or shall hereafter expire by its own limitation, or has heretofore been or shall hereafter be forfeited, dissolved or annulled by the Legislature or in any other manner, the corporation shall continue a body corporate for the purpose of defending the cause. Service of a summons or other process for appearance issued out of any court and other papers in the cause may be made upon the corporation by serving the same on such person as was, at the time of such expiration, forfeiture, dissolution or annulment, the president or secretary of the corporation, or the agent in charge of its principal office, or its designated registered agent for this State, personally, or by leaving the same at the dwelling house or usual place of abode of such president, secretary, agent in charge of said principal office or designated registered agent of the corporation. If service thereof cannot be made as hereinabove provided, then it may be made upon the corporation by serving the Secretary of State \* \* \* .”

R.R. 4:4-6 cannot be construed to authorize a general appearance or an acceptance of the service of process by you as Secretary of State. The court rule provides for a general appearance or acceptance of service by the defendant or by the defendant's attorney only. There is no authorization for a statutory agent of the defendant or any other person to accept service of the summons and complaint. Neither N.J.S. 2A:15-26 nor R.S. 14:13-14 directly or by implication vests the Secretary of State or the chief clerk in his office with power to accept or acknowledge service, where service cannot be made upon an agent of record or under the other conditions for lawful service upon the Secretary of State or upon the chief clerk in his office.

R.R. 4:4-3 fixes the procedure for service of the summons and complaint by the sheriff or other duly authorized person. That procedure should be strictly followed in the service of the summons and complaint upon the Secretary of State or chief clerk. See *X-L Liquors, Inc. v. Taylor*, 29 N.J. Super. 486, 490 (App. Div. 1954); *Driscoll v. Burlington-Bristol Bridge Co.*, 8 N.J. 433, 493 (Sup. Ct. 1951).

We therefore advise that you as Secretary of State and the chief clerk in your office have no authority to accept service of process within N.J.S. 2A:15-26 and R.S. 14:13-14. The court rules governing procedure require that the summons and complaint be served on you by the sheriff or other duly authorized person in actions against domestic and foreign corporations.

Very truly yours,

GROVER C. RICHMAN, JR.  
*Attorney General*

By: GEORGE H. BARBOUR  
*Deputy Attorney General*