

Swearing in of a United States Attorney

A United States Senator is not authorized by federal law to administer the oath of office to a United States Attorney, though he may administer a ceremonial oath.

August 3, 1982

MEMORANDUM OPINION FOR THE DEPUTY ATTORNEY GENERAL

This responds to your inquiry as to whether a United States Senator (in this instance, a Senator from Georgia) can administer the oath of office to a United States Attorney.

According to 5 U.S.C. § 2903(a) (1976) the oath of office required by Article VI, clause 3 of the Constitution and 5 U.S.C. § 3301 "may be administered by an individual authorized by the laws of the United States or by local law to administer oaths in the State, District, or territory or possession of the United States where the oath is administered." In addition, a department head may, pursuant to 5 U.S.C. § 2903(b)(1), authorize in writing any employee in his department to administer the oath of office to an employee of his department.

The laws of the United States do not generally authorize Senators to administer oaths.¹ Hence, unless a Senator is authorized by state law² to administer oaths he could not validly swear in a United States Attorney. This, however, does not mean that the Senator may not administer a ceremonial oath of office to the United States Attorney, provided that the latter actually takes the oath before a person authorized to administer it, such as a notary or a person in the United States Attorney's office authorized in writing by the Attorney General, pursuant to 5 U.S.C. § 2903(b)(1), to administer the oath. This procedure (a ceremonial oath with a separate, private formal oath) is apparently quite common and is a practice which has been followed for many years.

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¹ Senators may administer oaths with respect to matters within the jurisdiction of the Senate, in particular to witnesses before their committees. 2 U.S.C. §§ 23, 191.

² A necessarily limited perusal of the Georgia Code did not disclose any power of a Senator to administer oaths