

SUMMONS AND SHERIFFS: When a suitable person is designated to execute summons under the provisions of Section 28, Laws of Missouri 1945, pages 778 and 779, the summons may be directed to the sheriff or the person designated to execute the summons.

March 15, 1950

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97

Hon. Robert P. C. Wilson, III
Prosecuting Attorney
Platte County
Platte City, Missouri

Dear Mr. Wilson:

We have your recent letter requesting an official opinion of this department. Your opinion request and the question raised therein reads as follows:

"I respectfully request the opinion of your department on the following question:

"When a suitable person other than the Sheriff is designated to execute summons, under the provisions of Section 28, Senate Bill 207 (Pages-778-779, Laws Missouri, 1945), should the summons be directed to the Sheriff or to the other suitable person designated to execute the summons?"

Section 28, Laws of Missouri 1945, page 778 and 779, provides for the designation of a suitable person other than the sheriff to execute summons and reads as follows:

"Every magistrate, or clerk of the magistrate court, upon being satisfied that any original summons issued out of his court will not be executed for want of an officer to be had in time to execute the same, or in all cases where the sheriff is a party to the pending suit, or is otherwise interested in the determination thereof, or to save mileage expense, may empower any suitable person designated by the plaintiff not being a party to the suit, to execute the same, by endorsement upon the process to the following effect: 'At the request and risk of the plaintiff, I authorize
..... to execute

Hon. Robert P. C. Wilson, III

()
(E. F. Magistrate)
this writ. () 'and the person
()
(Clerk of the Magistrate Court)

so empowered shall thereupon possess all the authority of a sheriff in relation to the service of such summons, and shall be subject to the same obligations, and shall receive the same fees for his services, except mileage."

A statute similar to all material provisions of the above quoted statute and upon which our courts have ruled can be found in Section 20, Revised Code of Missouri, page 352 and in Section 2583, Missouri R. S. A. 1939. The court construed the above designated statute in the case of Hart v. Robinett, 5 Mo. 11, and held that the said statute permitted summons to be directed to any suitable person designated to execute the said summons saying on page 16:

"It is further insisted by the appellant, that the summons was not directed to, or executed by, any officer or person authorized to execute the same. The summons was directed to John Martin; the appellant insists that it should have been directed to the constable. This could not have been the intention of the law-making power. The statute requires the summons to be issued against the constable; and if issued against him, of course it ought not to be directed to him. It would be as unwise to entrust a delinquent officer with process against himself, as it would be to make a man judge of his own cause. In regard to the execution of the writ, the language of the statute is explicit enough. It provides that 'every justice issuing any process authorized by this act, upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, may empower any suitable person, not a party to the suit, to execute the same, by an endorsement on such process to the following effect: "At the request and risk of the plaintiff, I authorize _____ to execute and return this writ' -- Rev. Code, 352, § 20. If the justice be satisfied that no

Hon. Robert P. C. Wilson, III

officer can be had in time to execute the writ, he shall empower some suitable person to do it. (a) The case before us a still stronger one. Here no officer could be had at all, and of course, none in time. But the justice cannot empower a person to serve process without the endorsement required. * * * *"

It will however, be noticed that neither the magistrate nor the clerk of the Magistrate Court can empower a person to serve process without the required endorsement being made upon the summons.

Applying the principles enunciated by the court in the case of Hart v. Robinett, 5 Mo. 11, page 16, to the question here at hand it would seem to follow that in those instances wherein the summons is to be issued against the sheriff it should as a practical matter be directed to the suitable person designated to execute the same, and in those instances wherein a suitable person is designated to execute the summons as a matter of expediency, the summons may be directed to either the sheriff or the person designated, by the court or the clerk of the court, to execute the same.

CONCLUSION

It is, therefore, the opinion of this department that when a suitable person other than a sheriff is designated to execute summons under the provisions of Section 28, Laws of Missouri, 1945, pages 778 and 779, the summons should be directed to such designated person in all instances where the said process is to issue against the sheriff, and in those instances wherein the summons is to issue against any other individual the said summons may be directed to either the sheriff or to the person designated to execute the said summons. The summons should be endorsed as provided by law.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General