

Process against corporations charged with a crime is obtained - how

7-26
July 25, 1933.



Hon. Morgan M. Moulder,
Prosecuting Attorney,
Camden County,
Camdenton, Missouri.

Dear Sir:

I am answering your letter of July 11, 1933. Your request for an opinion was in the following words and figures:

"Please inform me of the procedure necessary in prosecuting a corporation for obstructing a public road. Should I first give the President of the Company notice and inform him of the obstruction? Then do I file an information and make the defendant in the name of the Corporation or name the Corporation and also the name of the President, or should I make only the President the party defendant? Then, after filing the information, should ordinary state warrant issue for the arrest of the President and be served upon him as upon any other defendant?

Perhaps I should explain that the President of the Corporation did not personally obstruct or supervise the obstruction of the road. I find one case in 96 Mo. Appeal at page 34, but can not gather the desired information from that case."

In Fletcher's Cyclopedia, Corporations - Permanent Edition, Vol. 10, starting on p. 688, I find the following law set out:

"It has been held that where a statute provides that violation of its provisions shall be deemed a misdemeanor punishable by fine, the fine cannot be collected from a corporation in an action of debt, since

process for violation of criminal statutes must be by information or indictment, although at common law an action of debt is the proper remedy for the recovery of a statutory penalty.

It has been said, generally, that the fact that there is no previous complaint nor binding over, in the prosecution of a corporation, is immaterial, and that the appropriate first step in such a prosecution is the finding of an indictment.

An indictment against a corporation should allege that it is a corporation, although there is a conflict in the decisions as to whether it is necessary to allege incorporation, at least where the name imports incorporation, but the details as to incorporation need not be stated.

A corporation being subject to indictment in a proper case and the law being powerless to enforce its commands, it follows that an indicted corporation may be brought into court by compulsion, if necessary, and where the statutes make no specific provision relative to the matter, the court having general jurisdiction to try an indicted corporation 'may as a necessary incident to such jurisdiction issue any appropriate writ for the purpose of bringing the defendant before it.' Undoubtedly, the proper manner of bringing an indicted corporation into court, no statute providing otherwise, is by summons, and when a summons has been duly served on such a corporation and it fails to appear, a judgment by default may be entered against it."

In the same text, but starting on page 659, I find the following law set out:

"If the penalty prescribed for an offense is both fine and imprisonment, the statute cannot be applied to corporations in so far as regards the imprisonment, but the inability to punish by imprisonment does not prevent an indictment against a corporation and its punishment by fine. According to Justice Holmes of the Supreme Court of the United States, 'If we free our minds from the notion that criminal statutes must be construed by some artificial or conventional rule, the natural inference, when a statute prescribes two independent penalties is that it means to inflict them so far as it can, and that if one of them is impossible, it does not mean on that account to let the defendant escape.'

The statutory provision as to service of summons must be complied with to give the court jurisdiction unless the right to service in the prescribed manner is waived by the corporation, and such waiver occurs where a corporation makes a voluntary appearance by attorney and demurs to the indictment. Where an appearance is entered on behalf of an indicted corporation by attorney, the corporation has the burden of proving that the appearance was unauthorized".

Answering your query, we suggest that you draw up indictments charging each guilty defendant separately for the misdemeanor described under Sec. 7932 R.S. of Mo. 1929, which section provides as follows:

" *** Any person or persons who shall willfully or knowingly obstruct or damage any public road by obstructing the side or cross drainage or ditches thereof, or by turning water upon such road or right of way, or by throwing or depositing brush, trees, stumps, logs, or any refuse or debris whatsoever, in said road, or on the sides or in the ditches thereof, or by fencing across or upon the right of way of the same, or by planting any hedge or erecting any advertising sign within the lines established for such road, or by changing the location thereof, or shall obstruct said road, highway or drains in any other manner whatsoever, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than five dollars nor more than two hundred dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment. ***"

Said indictment should be executed as indictments are prescribed to be executed by the statutes. It is not proof of the President's guilt or the corporation's guilt in the trial of the case for you to be able to show that you notified the President of the corporation that a crime had been committed by the obstruction of a public highway. Such a notice would amount to nothing more than an accusation of guilt. To prove the corporation criminally liable, you will have to have evidence that the corporation authorized the obstruction. To prove the corporation's agents and officers personally liable, you must have evidence that they participated in the crime.

By starting the proceeding by indictment, you are given access to a court of record in the issuance of any and all process,

and since a warrant, which is the usual process, would not be appropriate against a corporation, the court having jurisdiction will be forced to issue an extraordinary process.

Sec. 3565, R.S. of Mo. 1929 provides in part as follows:

"Upon the trial of any indictment or information, the court may at any stage of the proceeding, in furtherance of justice, amend or supply the pleading, writ, process, entry, return or other proceedings; ***"

Sec. 3566 R.S. of Mo. 1929 provides as follows:

"A warrant or other process for the arrest of the defendant indicted may be issued by the court in which such indictment shall have been found or may be pending, or by the judge or clerk thereof, or by any judge of the supreme court, and by no other officers, and may be directed to and executed in any county in this state."

Since our statutes as underscored above contemplate that process other than by warrant might be necessary in the interest of justice that indicted defendants may be brought in court in peculiar criminal cases, and since the process of summons was the common law method of calling a corporation to answer for a crime, it is our opinion that in your case the process to be issued against the corporation by the court is a summons served in the statutory manner.

If we have not fully answered your query, you may call upon us further.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General

APPROVED:

Attorney General

WOS:AH