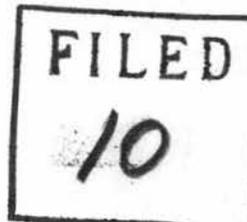


CORPORATIONS: Service of criminal process on a corporation must be made on the registered agent of the corporation.

February 26, 1951

2-26-51



Mr. Ted A. Bollinger
Prosecuting Attorney
Shelby County
Shelbyville, Missouri

Dear Mr. Bollinger:

We have given careful consideration to your recent request for an official opinion, which request is as follows:

"The writer also requests information with regard to the proper procedure to be followed for the service of a criminal warrant upon a Corporation under Section 246.210, RSMo. 1949. The Corporation alleged to have violated the above statute is a foreign Corporation and the question arises whether the said warrant can be served upon the foreman of the crew of workmen in lieu of some corporate officer. As this matter is now pending here an early reply hereto is needed."

The question to be determined concerns the legal process to be followed in bringing a corporation into court for an alleged violation of a criminal statute. An officer or employee of a corporation, when accused of crime, may be arrested and proceeded against as any other individual. But, when the corporation itself is charged with the commission of a crime, a special process is found to be necessary.

The Missouri code of civil procedure defines the process of serving a summons on a corporation in a civil suit, but no such provision can be found in our code of criminal procedure.

Mr. Ted A. Bollinger

The statutes governing this process are incorporated in the general laws pertaining to corporations. Sections 351.370 and 351.380, RSMo. 1949, describe the manner in which a corporation, chartered under the laws of Missouri, may be served with criminal process. And Sections 351.620 and 351.630 make the same provisions for serving a foreign corporation.

Section 351.620, RSMo. 1949, is as follows:

"1. Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

"(1) A registered office which may be, but need not be, the same as its place of business in this state;

"(2) A registered agent, which agent may be either an individual, resident in this state, whose business office is identical with such registered office, or a corporation authorized to transact business in this state having a business office identical with such registered office.

"2. The address, including street and number, if any, of the initial registered office, and the name of the initial registered agent of each foreign corporation shall be stated in its application for a certificate of authority to transact business in this state."

Section 351.630, RSMo. 1949, is as follows:

"1. Service of process in any suit, action, or proceeding, or service of any notice or demand required or permitted by law to be served on a foreign corporation may be made on such corporation by service thereof on the registered agent of such corporation. Whenever any foreign corporation authorized to transact business in this state shall fail to appoint or maintain in this state a registered agent upon whom service of legal process or service of any such notice or demand may be had, or whenever any such registered agent cannot with reasonable diligence be found at the registered office in this state of such

Mr. Ted A. Bollinger

corporation, or whenever the certificate of authority of any foreign corporation shall be forfeited, then and in every such case the secretary of state shall be irrevocably authorized as the agent and representative of such foreign corporation to accept service of any process, or service of any notice or demand required or permitted by law to be served upon such corporation. Service on the secretary of state of any such process, notice, or demand against any such foreign corporation shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. In the event that any process, notice, or demand is served on the secretary of state, he shall immediately cause a copy thereof to be forwarded by registered mail, addressed to such corporation at it principal office as the same appears in the records of the secretary of state.

"2. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

"3. The secretary of state shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto."

The proper procedure for serving a criminal warrant on a foreign corporation is determined by these two sections. Any such corporation, authorized to do business in Missouri, must maintain a registered office in this state and keep a registered agent at said office. Service of any process may be made on such corporation by serving the registered agent thereof. If

Mr. Ted A. Bollinger

any such corporation, however, should by any chance be without the required registered agent, process may be served on the secretary of state. The wording of the law is clear. It means that service must be made on the registered agent at the registered office. No other officer or employee of the corporation can qualify as such agent.

CONCLUSION

It is the opinion of this department that the service of a criminal warrant on a foreign corporation, authorized to transact business in Missouri, must be made by serving said warrant on the registered agent required by law to be appointed and maintained by the corporation, or on the secretary of state if no such agent can be found. A foreman of a crew of workmen is not qualified as such agent, and no such warrant should be served on him. This rule applies also to corporations chartered under the laws of this state.

Respectfully submitted,

B. A. TAYLOR
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

BAT:ba