

GARNISHMENT:  
MAGISTRATE COURTS:

In Magistrate Court only money owed to the defendant, by the garnishee, at time of answer of interrogatories is subject to garnishment.



June 6, 1953

Honorable Joseph P. Collins  
Chief Magistrate  
The Magistrate Court of the City of St. Louis  
Civil Courts Building  
12th and Market Streets  
St. Louis, Missouri

Dear Judge Collins:

In your letter of May 13th, 1953, you requested an official opinion of this office as follows:

"Under the garnishment law applicable to Magistrate Courts, an Execution and Garnishment may be issued returnable within ninety days after service of the same. In several instances, a garnishee, immediately upon being served with the Summons of garnishment, made return in writing and in such return admitted the indebtedness to the employee of the amount due at the time of the service of the garnishment and paid the same into the registry of the Magistrate Court, although the garnishment was not returnable until ninety days after date of service. The plaintiff who ordered the garnishment insists that the Magistrate Court may, at the end of the ninety-day period and after the filing of interrogatories by the plaintiff and the service of the same upon the garnishee, bring the garnishee into court for the purpose of ascertaining its indebtedness to the employee during the entire ninety day period even though the employer had answered within a day or two after

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being served with the Summons of garnishment. The employer (garnishee) on the other hand claims that having filed its answer to the garnishment upon being served with a Summons of garnishment, that this Court has no jurisdiction to inquire as to the earnings of the employee during the remainder of the period until the expiration of the ninety days from the date of the execution and garnishment."

Section 525.320, RSMo 1949, makes provision for summoning a garnishee before a Magistrate as follows:

"If there be not sufficient goods and chattels whereon to levy an execution, the sheriff shall summon in writing, as garnishees, such debtors or other persons having in their possession or under their control money, property or effects of the defendant in the execution, as may be named to him by the plaintiff or his agent, to appear before the magistrate at a time and place to be specified in the summons, not more than ninety days from the service of the same, to answer such interrogatories as may be exhibited against them touching their indebtedness, or their possession or control of money, property or effects belonging to such defendant, and like proceedings shall be had thereon before the magistrate to final judgment and execution, as in suits instituted by attachment in magistrate courts."

(Underscoring ours.)

However, although the summons must specify a time and place for appearance of the garnishee, such garnishee may, at his option, appear before the return date under authority of Section 525.340, RSMo 1949:

"Any garnishee, being summoned, may, at his option, appear and answer the interrogatories before the return day of the attachment."

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Section 525.330, RSMo 1949, specifically states that only indebtedness at the time of answer may be inquired into:

"The following interrogatories, and none other, shall be propounded to a garnishee summoned in a suit before a justice of the peace, which he shall answer on oath: First, at the time of service of the garnishment, had you in your possession, or under your control, any property, money or effects of the defendant? If so, state what property, how much and of what value, and what money or effects; second, at the time of service of the garnishment, did you owe the defendant any money, or do you owe him any now? If so, how much, on what account, and when did it become due? If not yet due, when will it become due?"

(Underscoring ours.)

That the above section is applicable to Magistrates, is made clear by House Bill No. 281, appearing in Laws of Missouri, 1945, page 1079 (this section dropped in the 1949 Revision):

"Whenever, in any statute, the word 'justice' (referring to justice of the peace) or the words 'justice of the peace' appear, said word or words shall hereafter be deemed to include and refer to 'magistrate,' unless there be something in the subject or context repugnant to such construction."

Since the Magistrate Court is prohibited from inquiry as to indebtedness incurred subsequent to garnishee's answer, the Court is, of course, unable to make any order touching upon any such indebtedness, and can only deal with subsequent indebtedness by issuance of further summons.

#### CONCLUSION

It is, therefore, the opinion of this office that a garnishee may, at his option, appear and make answer

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before return day specified in the summons; and that the Magistrate may only make order concerning indebtedness to the defendant at the time of answer of interrogatories by the garnishee.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON  
Attorney General

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