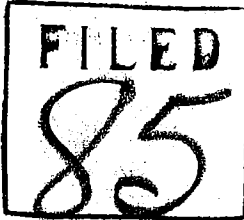


EXECUTIONS: After receiving an order of execution on real property,  
SHERIFFS: a sheriff should proceed with the levy and execution. Further, unless otherwise directed, every execution issued from any court of record shall be returnable at the next succeeding term.



September 12, 1957

Honorable John S. Stevens  
Assistant Prosecuting Attorney  
St. Louis County  
Courthouse  
Clayton, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"Question has arisen in this office concerning sale after a levy by an officer of the Court. We would greatly appreciate your opinion in the following situation:

When the Sheriff is directed by an execution to levy and levy is made on real property, is it necessary for the Sheriff to await orders of the plaintiff's attorney, or should the sheriff proceed to advertise and sell the property levied upon. If he should proceed, within what period of time does he have power to do this."

In regard to your first question, we find nothing in the law which would require the sheriff to await orders of the plaintiff's attorney in this matter. Section 513.020, RSMo 1949, reads:

"Executions may issue upon a judgment at any time within ten years after the rendition of such judgment."

Section 513.025, RSMo 1949, reads:

"Such execution shall be a fieri facias against the goods, chattels and real estate of the party against whom the judgment, order or decree is rendered, and shall be to the following effect:

Honorable John S. Stevens

The state of Missouri, to the sheriff of  
the county of \_\_\_\_\_.

Whereas, A B, on the \_\_\_\_\_ day of \_\_\_\_\_, in  
the year of our Lord nineteen hundred and \_\_\_\_\_,  
at our court, hath recovered against  
C D, the sum of \_\_\_\_\_, for debt (or damages,  
as the case may be), and also for the sum of \_\_\_\_\_  
which to the said A B were adjudged for  
his damages, as well as by reason of detain-  
ing the said debt, as for his cost in that  
suit expended; These are, therefore, to  
command you, that of the goods and chattels  
and real estate of the said C D, you cause  
to be made the debt, damages and costs (or  
damages and costs), and that you have the  
same before the judge of said court, on the  
\_\_\_\_\_ day of \_\_\_\_\_, to satisfy the debt, dam-  
ages and costs aforesaid (or damages alone  
and costs), and that you certify how you  
execute this writ. Witness: E F, clerk of  
the said court, at \_\_\_\_\_, this \_\_\_\_\_ day of  
\_\_\_\_\_ in the year \_\_\_\_\_. E F, clerk."

From the above, it would plainly appear that the sheriff is  
to proceed forthwith after receiving the directorate provided for  
in Section 513.025, RSMo 1949.

Section 513.005, RSMo 1949, reads:

"When real estate shall be taken in execution  
by an officer, it shall be his duty to expose  
the same to sale at the courthouse door, on  
some day during the term of the circuit court  
of the county where the same is situated, hav-  
ing previously given twenty days' notice of  
the time and place of sale, and what real  
estate is to be sold and where situated, by  
advertisement in some newspaper printed in the  
county which may be designated by the plain-  
tiff or his attorney of record, if there be  
one regularly published, weekly or daily, and  
if not, by at least six printed or written  
handbills, signed by such sheriff, and put up  
in public places in different parts of the  
county; and the printer's fee for such adver-  
tisement shall be taxed and paid as other  
costs; provided, that in all cities in this  
state now or hereafter containing one hundred  
thousand inhabitants or more, such sales shall

Honorable John S. Stevens

be on the floor of the real estate exchange or at the courthouse door, as may be announced in said advertisement."

From the above, it appears that the plaintiff, or his attorney, may direct the newspaper in which publication shall be made. However, in view of the fact that the section does not vest in the plaintiff or his attorney any other authority in connection with the matter we take it to have been the intention of the Legislature that no additional authority should reside in them, and that it is not necessary for the sheriff to await the orders of the plaintiff or plaintiff's attorney before proceeding to advertise and to sell the property levied on.

You also inquire whether, if the sheriff should proceed, within what period of time does he have to do so.

Section 513.030, RSMo 1949, reads:

"Every execution issued from any court of record shall be made returnable at the next succeeding term, unless the plaintiff, or person to whose use the suit was brought, shall otherwise direct; then it shall be the duty of the clerk issuing the same to make it returnable to the second succeeding term."

From the above, we believe that so long as the sheriff makes the return as above provided that he has fulfilled his duty in this respect.

#### CONCLUSION

It is the opinion of this department that after receiving an order of execution on real property, a sheriff should proceed with the levy and execution. It is the further opinion of this department that unless otherwise directed, every execution issued from any court of record shall be returnable at the next succeeding term.

The foregoing opinion, which is hereby approved, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton  
Attorney General