

MAGISTRATES: Magistrate may issue execution directed to sheriff of another county for purpose of making levy or
EXECUTIONS: garnisheeing of judgment debtor.

October 4, 1961

Honorable T. E. Lauer
Prosecuting Attorney
Callaway County
Fulton, Missouri



Dear Mr. Lauer:

On August 21, 1961, you wrote to this office requesting a review and reappraisal of a previously written opinion by this office. This earlier opinion was written on July 28, 1948, and was addressed to Judge Oral H. McCubbin of Lawrence County. The basic issue in the earlier opinion was "whether or not a magistrate may issue an execution from his court directed to the sheriff of another county, either for the purpose of making a levy on property of the judgment debtor, or for the purpose of serving a writ of garnishment on the employer of the judgment debtor who may be residing in another county." In the 1948 opinion we answered this question in the negative. We have withdrawn that opinion and are issuing the following in its place.

Section 517.050, RSMo 1959, states, "magistrate courts shall be courts of record". Section 517.910, RSMo 1959, is also found in the chapter entitled Magistrate Court Procedure and in relation to the magistrate courts it says, "Execution, except as otherwise herein provided, shall have the same force and effect and be proceeded upon the same as executions issued out of other courts of record; * * *". Those sections in Chapter 513 which set forth the procedure to be used in levying executions apply to magistrate courts. In Section 513.035, RSMo 1959, it specifically provides that "Executions issued upon any judgment, order or decree rendered in any court of record, may be directed to and executed in any county in this state; and executions may issue at the same time to different counties". This is substantially the same as Supreme Court Rule 76.05.

Although there is no case law on the subject, the basic theory that a magistrate court is a court of record and that executions from magistrate courts may be directed to any sheriff in the state has been expressed in Volume I, Missouri Practice, Section 1361, p. 640.

CONCLUSION

From the combined reading of the foregoing sections and

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Supreme Court Rule, it is the opinion of this department that a magistrate court may issue an execution directed to the sheriff of another county, either for the purpose of making a levy on the property of a judgment debtor or for serving a writ of garnishment in aid of execution in another county.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Eugene G. Bushmann.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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