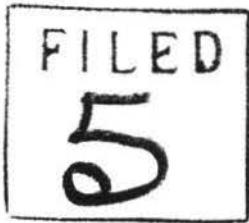


SUBPOENAS: Circuit Clerk may issue subpoena in blank.

WITNESSES:



May 21, 1953

Honorable Harold W. Barrick  
Prosecuting Attorney  
Pettis County  
Sedalia, Missouri

Dear Mr. Barrick:

In your letter of May 12, 1953, you requested an official opinion on the following question:

"Can a Circuit Clerk under the applicable Statutes of Missouri legally issue a subpoena for a witness in blank?"

Section 491.090, RSMo 1949, authorizes issuance of summons to witnesses by the Clerk of the Court wherein a matter is pending, or by a notary public of the county, as follows:

"491.090. Summons of witnesses.--In all cases where witnesses are required to attend the trial in any cause in any court of record, a summons shall be issued by the clerk of the court wherein the matter is pending, or by some notary public of the county wherein such trial shall be had, stating the day and place when and where the witnesses are to appear."

Section 491.100 (1), RSMo 1949, specifies the form of summons of witnesses:

"491.100. Subpoena, how issued--action of court when subpoena commands production of papers.--1. Such summons shall be in the form of a subpoena, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give

Honorable Harold W. Barrick:

testimony at a time and place therein specified. The clerk of the court wherein the matter is pending, or the notary public of the county wherein such trial shall be had, shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service."

(Underscoring ours.)

This section was previously Section 1898, R.S. Mo. 1939, and read as follows:

"Sec. 1898. Subpoena, how issued and served.--Such summons shall contain the names of all witnesses for whom a summons is required, by the same party, in the same cause, at the same time, who reside in the same county, and may be served in any county in the state."

The obvious purpose of amending Section 1898 (Laws 1947, Vol. II, Page 237) was to eliminate the necessity of filling in the names of witnesses in the subpoena by the issuing clerk or notary public, and to provide for issuance of "blank" subpoenas.

#### CONCLUSION

It is, therefore, the opinion of this office that the Clerk of a Circuit Court may issue a subpoena signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.

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

Yours very truly,

JOHN M. DALTON  
Attorney General

PMcG:irk