September 10, 1996

OPINION NO. 96-044

The Honorable James J. Mayer, Jr.
Richland County Prosecuting Attorney
38 South Park, Second Floor
Mansfield, Ohio 44902

Dear Prosecutor Mayer:

You have requested an opinion concerning the execution of a warrant issued by a municipal court pursuant to R.C. 2333.11 to secure the attendance of a judgment debtor in a proceeding in aid of execution. Specifically, you wish to know which public officials are required to execute these warrants.

Warrants for the arrest of judgment debtors are issued pursuant to R.C. 2333.11, which provides as follows:

> Instead of the order mentioned in section 2333.10 of the Revised Code requiring the attendance of the judgment debtor, upon proof in writing to his satisfaction, by affidavit of the judgment creditor, or otherwise, that there is danger of the debtor's leaving the state, or concealing himself, to avoid such examination, *the judge may issue a warrant requiring the sheriff to arrest and bring such debtor before him. Such warrant can be issued only by a judge of the court of common pleas, or the probate judge, of a county in which the debtor is found, and the sheriff can execute it only within that county.* In executing the warrant, the sheriff shall deliver to the debtor a copy thereof and of the testimony on which it issued. (Emphasis added.)

As a preliminary matter, I must discuss the authority of a municipal court to issue warrants pursuant to R.C. 2333.11. Although the language of R.C. 2333.11 states that warrants for the arrest of judgment debtors may be issued only by judges of the court of common pleas or probate judges, it has been held that, under R.C. 1901.21(A), the power conferred upon common pleas judges and probate judges pursuant to R.C. 2333.11 extends to municipal court judges. *Toledo Edison Co. v. Allen*, 13 Ohio App. 3d 108, 468 N.E.2d 373 (Williams County 1983); *see also Mentor Landscapes & Supply Co., Inc. v. Campbell*, 85 Ohio App. 3d 507, 620 N.E.2d 149 (Lake County 1993); 1990 Op. Att'y Gen. No. 90-054.

R.C. 1901.21(A) states that "[i]n any civil case or proceeding for which no special provision is made in [R.C. Chapter 1901], the practice and procedure in the case or proceeding shall be the same as in courts of common pleas." In construing the provisions of R.C. 1901.21(A) and R.C. 2333.11 together, the court in *Toledo Edison Co. v. Allen* stated:

> Our analysis of the pertinent statutory sections convinces us that under R.C. Chapter 1901, municipal courts enjoy as broad a set of jurisdictional powers to make and enforce orders in aid of execution proceedings as do courts of common pleas under R.C. Chapter 2333. In fact, and as a general rule, in the absence of special procedure to the contrary in R.C. Chapter 1901, municipal courts, in aid of execution proceedings, have the power to issue all necessary orders for which similar power and authority is conferred upon the courts of common pleas under R.C. Chapter 2333.
>
> ....
>
> ... Here, the trial court, in its order, seemed to imply that proceedings under R.C. Chapter 2333, such as the issuance of capias to secure the judgment debtor's presence at the examination hearing, are exclusively the domain of common pleas courts. True, R.C. 2333.11 states that a judicial "[arrest] warrant can only be issued by a judge of the court of common pleas," but this section merely vests in common pleas judges the *same power* already accorded municipal judges under R.C. 1901.13(B)[1] and 1901.19(A), (B), and (F). Moreover, the "gap-filler" provision in R.C. 1901.21(A) assures that in civil cases parties will be afforded a uniform procedure in aid of execution proceedings, as between municipal and common pleas courts, unless a "special provision" to the contrary is mandated in R.C. 1901.01 to 1901.37. In this case, we are unable to discern any "special provision" in R.C. Chapter 1901 that would prevent a municipal court from exercising power or issuing any necessary order, to the same extent as courts of common pleas, in aid of execution of its judgments, for the benefit of judgment creditors, including a judicial arrest warrant to secure the debtor's presence, if necessary. In other words, R.C. 1901.21(A) incorporates by reference the procedure and remedies of R.C. Chapter 2333 in aid of execution proceedings, unless the same procedure and remedy are already provided for in R.C. Chapter 1901 or unless a "special provision" mandates otherwise.
>
> As R.C. 2333.09 clearly imports: "A judgment creditor *shall be entitled* to an order for the examination of a judgment debtor concerning his property, income, or other means of satisfying the judgment[.]" (Emphasis added.) Judgment creditors have a right to expect that their undoubtedly valid default judgments will be satisfied. They also have a right to expect that the satisfaction of their judgments will be accomplished through the most cost-efficient mechanism provided by the aid of execution statutes. To refuse to implement the plain language of these statutes would

---

[1] The provisions of R.C. 1901.13(B) are now located in R.C. 1901.13(A)(2). 1985-1986 Ohio Laws, Part I, 1569, 1599 (Am. Sub. H.B. 159, eff. Mar. 19, 1987).

> effectively divest judgment creditors of legislatively created remedies for enforcing their right to that which default judgments entitle them, and, as a practical matter, it would paralyze their ability to make judgment debtors accountable for that which they lawfully owe. (Footnote added and omitted.)

Id., 13 Ohio App. 3d at 110-12, 468 N.E.2d at 375-77. The court in *Toledo Edison Co. v. Allen* thus found that, pursuant to R.C. 1901.21(A), the authority to issue warrants in proceedings in aid of execution conferred upon common pleas judges and probate judges by R.C. 2333.11 extends to municipal court judges.

I find the opinion of the court in *Toledo Edison Co. v. Allen* well reasoned and persuasive. Accordingly, I believe that, in proceedings in aid of execution, a municipal court is authorized under R.C. 2333.11 and R.C. 1901.21(A) to issue warrants to secure the attendance of judgment debtors found within the jurisdiction of the court.

With respect to the execution of warrants requiring the arrest of judgment debtors, R.C. 2333.11 provides that warrants issued by the judges of the court of common pleas and probate court are to be issued to and executed by the sheriff of the county in which the court is located. Insofar as the bailiff and deputy bailiffs of a municipal court are required to "perform for the [municipal] court services similar to those performed by the sheriff for the court of common pleas," R.C. 1901.32(A)(6), warrants issued by municipal court judges to effect the arrest of judgment debtors found within the jurisdiction of the court are to be issued to and executed by the bailiff and deputy bailiffs of the municipal court. *See* 1991 Op. Att'y Gen. No. 91-047 at 2-248 (since the responsibility for the transportation of prisoners between the county jail and the court of common pleas is delegated to the county sheriff and the criminal bailiff, and municipal court bailiffs perform for the municipal court services similar to those performed by the sheriff for the court of common pleas, the duties of the municipal court bailiffs must be construed to include the prisoner transportation duties of the county sheriff and criminal bailiff); *see also* R.C. 1901.23 (requiring the bailiffs of a municipal court to serve writs and process for that court).

In addition, R.C. 1901.32(A)(5) provides that municipal corporation police officers and township police constables may perform the duties of a municipal court bailiff. This section states:

> Every police officer of any municipal corporation and police constable of a township within the territory of the court is ex officio a deputy bailiff of the court in and for the municipal corporation or township within which he is commissioned as a police officer or police constable, and shall perform any duties in respect to cases within his jurisdiction that are required of him by a judge of the court, or by the clerk or a bailiff or deputy bailiff of the court, without additional compensation.

Thus, a municipal court may issue warrants to secure the attendance of judgment debtors in proceedings in aid of execution to any police officer of a municipal corporation located within the territory of the municipal court, or police constable of a township located within the territory of the municipal court.

In light of the foregoing, it is my opinion, and you are hereby advised as follows:

1. In proceedings in aid of execution, a municipal court is authorized under R.C. 2333.11 and R.C. 1901.21(A) to issue warrants to secure the attendance of judgment debtors found within the jurisdiction of the court.

2. Warrants issued by a municipal court in a proceeding in aid of execution to secure the attendance of a judgment debtor found within the jurisdiction of the court are to be executed by the bailiff and deputy bailiffs of the municipal court, police officers of municipal corporations located within the territory of a municipal court, and police constables of townships located within the territory of a municipal court.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

September 10, 1996

The Honorable James J. Mayer, Jr.
Richland County Prosecuting Attorney
38 South Park, Second Floor
Mansfield, Ohio 44902

SYLLABUS: 96-044

1. In proceedings in aid of execution, a municipal court is authorized under R.C. 2333.11 and R.C. 1901.21(A) to issue warrants to secure the attendance of judgment debtors found within the jurisdiction of the court.

2. Warrants issued by a municipal court in a proceeding in aid of execution to secure the attendance of a judgment debtor found within the jurisdiction of the court are to be executed by the bailiff and deputy bailiffs of the municipal court, police officers of municipal corporations located within the territory of a municipal court, and police constables of townships located within the territory of a municipal court.