

OPINION NO. 70-009**Syllabus:**

When a railroad company is claimed to have committed an offense in violation of Section 5589.21, Revised Code, and there is no regular freight or ticket agent in the county where the offense occurred, the proper method of service of summons upon the company is by service upon the statutory (designated) agent of the company, the Secretary of State when standing as the agent of the company, or the appropriate persons listed in Section 2703.10, Revised Code.

To: Robert L. Brown, Crawford County Pros. Atty., Bucyrus, Ohio
By: Paul W. Brown, Attorney General, January 26, 1970

I have before me your request for my opinion on the following question:

What is the proper method of service upon a railroad company which is claimed to have committed an offense in violation of Section 5589.21, Revised Code, effective September 4, 1969, when there is no regular freight or ticket agent of the company in the county where the offense occurred?

Section 5589.21, Revised Code, relates to the obstruction of public roads by railroad companies and states in pertinent part:

"* * * * *"

"Upon the filing of an affidavit or complaint for violation of this section, summons shall be issued to the railroad company pursuant to division (B) of section 2935.10 of the Revised Code, which summons shall be served on the regular ticket or freight agent of the company in the county where the offense occurred." (Emphasis added.)

Also of significance to the question is Section 2935.09, Revised Code, which relates to arrest and prosecution generally and Section 2935.10, Revised Code, which relates to the issue of warrants and summons. Section 2935.09, supra, states:

"In all cases not provided by sections 2935.02 to 2935.08, inclusive, of the Revised Code, in order to cause the arrest or prosecution of a person charged with committing an offense in this state, a peace officer, or a private citizen having knowledge of the facts, shall file with the judge or clerk of a court of record, or with a magistrate, an affidavit charging the offense committed, or shall file such affidavit with the prosecuting attorney or attorney charged by a law with the prosecution of offenses in court or before such magistrate, for the purpose of having a complaint filed by such prosecuting or other authorized attorney."

Section 2935.10, Revised Code, states in pertinent part:

"Upon the filing of an affidavit or complaint as provided by section 2935.09 of the Revised Code,
* * *

"If the offense charged is a misdemeanor or violation of a municipal ordinance, such judge, clerk, or magistrate may:

"* * * * *"

"(B) Issue summons, to be served by a peace officer, bailiff, or court constable, commanding the person against whom the affidavit or complaint was filed to appear forthwith, or at a fixed time in the future, before such court or magistrate. Such summons shall be served in the same manner as in civil cases.

"* * * * *"

Section 2935.09, supra, states that it is controlling in "all cases," with the exception of those cases specifically excluded. It should be noted that the General Assembly did not except Section 5589.21, supra, from the operation of Section

2935.09, supra. Therefore, the provisions of Section 2935.09, supra, are applicable to offenses charged under Section 5589.21, supra.

The method for service of summons for offenses charged under Section 2935.09, supra, is provided in Section 2935.10, supra. In analyzing Section 2935.10, supra, it is necessary to refer to Section 1.02, Revised Code, which defines a person to include a private corporation. Thus, as a private corporation, a railroad is a proper person to be served when summons is issued pursuant to Section 2935.10, supra, for a prosecution provided by Section 2935.09, supra.

The Revised Code provides for service upon a corporation in various ways. Any such process may be served upon the statutory (designated) agent of the corporation pursuant to Sections 1701.07 and 1703.141, Revised Code, or upon the Secretary of State as agent of the corporation pursuant to Sections 1701.07, 1703.19, and 1703.191, Revised Code, the appropriate person to be served and the applicable section determined by the status of the corporation. Additional provision for service upon a corporation is made in Section 2703.10, Revised Code, which states in pertinent part:

"A summons against a corporation may be served upon the president, mayor, chairman, or president of the board of directors or trustees, or other chief officer; or if its chief is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of such officers can be found, by a copy left at the office or usual place of business of the corporation with the person having charge thereof. If such corporation is a railroad company, whether foreign or domestic, and whether the charter thereof prescribes the manner and place, or either, of service of process thereon, or, if it is a street railway company, owning or operating a street railway passing through two or more counties, the summons may be served upon any regular ticket or freight agent of such railroad company or street railway company; or, if there is no such agent, then upon any conductor in charge of any train or car upon such railroad or street railway in any county in this state in which such railroad or street railway is located, or through which it passes.
* * *"

In summary, the provisions of Section 2935.09, supra, are applicable to offenses charged under Section 5589.21, supra, and the method described above for service under Section 2935.10, supra, is applicable to the fact situation presented in the question that is the subject of this opinion. The statutory (designated) agent, the Secretary of State, and the persons listed in Section 2703.10, supra, provide several alternatives for service of process when a corporation is the party to be served.

In conclusion, it is my opinion and you are hereby advised that when a railroad company is claimed to have committed an offense in violation of Section 5589.21, Revised Code, and there

is no regular freight or ticket agent in the county where the offense occurred, the proper method of service of summons upon the company is by service upon the statutory (designated) agent of the company, the Secretary of State when standing as the agent of the company, or the appropriate persons listed in Section 2703.10, Revised Code.