

OPINION NO. 70-130

Syllabus:

1. The sheriff is required to serve summons, notices, and subpoenas which are directed to him by the juvenile court.

2. In the event the juvenile court requests the summons, notices, or subpoenas to be served personally or whether the same is to be delivered by registered or certified mail, the sheriff's office is legally required to serve the same in accordance with the directions of the juvenile court.

3. If the person to be served summons, notices, and subpoenas of the juvenile court is out of the state and his address is known, service of summons may be made by the sheriff by delivering a copy to him personally or mailing a copy to him by registered or certified mail.

To: Angus B. Wilson, Brown County Pros. Atty., Georgetown, Ohio
By: Paul W. Brown, Attorney General, September 11, 1970

I have your request for my opinion in regard to Sections 2151.28 and 2151.29, Revised Code.

You inquire, first, as to whether the sheriff is required to serve summons, notices, and subpoenas which are directed to the sheriff by the juvenile court.

Initially, the question may be raised as to whether the new Ohio Rules of Civil Procedure are dispositive in this case. Civil Rule 74 provides that "[t]hese Rules of Civil Procedure shall apply in civil juvenile proceedings except to the extent that specific procedure is otherwise provided by law or to the extent that by their nature these rules would be clearly inapplicable." Thus, the procedure provided for in the Ohio Revised Code still applies and has not been altered by Civil Rule 74.

Section 2151.19, Revised Code, provides, in pertinent part:

"The summons, warrants, citations, subpoenas and other writs of the juvenile court may issue to a probation officer of any such court or to the

sheriff of any county or any marshal, constable or police officer, and the provisions of law relating to the subpoenaing of witnesses in other cases shall apply in so far as they are applicable." (Emphasis added.)

Furthermore, Section 2707.03, Revised Code, provides:

"If an officer fails to execute a summons, order, execution, or other process directed to him, or to return it, as required by law, unless he makes it appear, to the satisfaction of the court, that he was prevented by unavoidable accident from so doing, he shall be amerced, upon motion and notice * * * in a sum not exceeding one thousand dollars, and be liable to the action of any person aggrieved by such failure.
* * *"

It is clear from the above quoted statutes that a sheriff is required to serve summons, notices, and subpoenas which are directed to him by the juvenile court. Furthermore, he may be liable for a failure to do so.

In your request for my opinion, you also ask:

"* * *In the event the Juvenile Court requests the * * * [summons, notices and subpoenas] to be served personally or whether the same is to be delivered by certified mail, is the Sheriff's office legally required to serve the same in accordance with the directions of the Juvenile Court?"

"I would also like to know if the person to be served is out of the state is the Sheriff required to deliver the service of summons to said person outside the state by regular or certified mail when the address of the person is known."

Section 2151.29, Revised Code, provides in part:

"Service of summons, notices, and subpoenas, prescribed by section 2151.28 of the Revised Code, shall be made by delivering a copy to the person summoned, notified, or subpoenaed, or by leaving a copy at his usual place of residence. If the juvenile judge is satisfied that such service is impracticable, he may order service by registered or certified mail. If the person to be served is without the state but can be found or his address is known, or his whereabouts or address can with reasonable diligence be ascertained, service of the summons may be made by delivering a copy to him personally or mailing a copy to him by registered or certified mail."

It has been established that the Revised Code delegates a legal duty to the sheriff to serve summons, notices, and subpoenas if he is directed to do so by the juvenile court. Similarly, the Revised Code provides the manner in which such service shall be carried out. The manner to be followed is to deliver "a copy to the person summoned, notified, or subpoenaed, or by leaving a copy at his usual place of residence" unless "the juve-

nile judge is satisfied that such service is impracticable, [then] he may order service by registered or certified mail." Section 2151.29, supra. It is apparent that the juvenile court uses Section 2151.29, supra, in establishing guidelines of service in its directions to the sheriff, and that the sheriff's office is legally required to make service in accordance with the directions of the juvenile court.

Concerning your question in regard to service of summons to a person outside the state by regular or certified mail, Section 2151.29, supra, is controlling. That statute states that: "If the person to be served is without the state * * *[and] his address is known * * *, service of the summons may be made by delivering a copy to him personally or mailing a copy to him by registered or certified mail." (Emphasis added.) It is clear from the above quoted statute that if the person is without the state and his address is known, the sheriff has the choice of serving summons either personally or by registered or certified mail.

In conclusion, it is my opinion and you are advised:

1. The sheriff is required to serve summons, notices, and subpoenas which are directed to him by the juvenile court.
2. In the event the juvenile court requests the summons, notices, or subpoenas to be served personally or whether the same is to be delivered by registered or certified mail, the sheriff's office is legally required to serve the same in accordance with the directions of the juvenile court.
3. If the person to be served summons, notices, and subpoenas of the juvenile court is out of the state and his address is known, service of summons may be made by the sheriff by delivering a copy to him personally or mailing a copy to him by registered or certified mail.