

**Note from the Attorney General's Office:**

1959 Op. Att'y Gen. No. 59-103 was overruled in part by 1979 Op. Att'y Gen. No. 79-008.

103

SHERIFF—FOREIGN EXECUTION DOCKET—PROCESS FROM MUNICIPAL COURTS—DUTY TO EXECUTE—JUDGMENT OF MUNICIPAL COURT MADE LIEN UPON REAL ESTATE, §2329.02 R.C.—(2491 OAG 1953 p. 141, Approved and followed).

SYLLABUS:

1. The sheriff is required to enter on the foreign execution docket and to execute such process directed against the personal property of the judgment debtor by a foreign municipal court. Opinion No. 2491, Opinions of the Attorney General for 1953, p. 141, approved and followed.

2. The sheriff is required to execute legal process in civil cases directed to him by municipal courts whose territory lies wholly outside his county as provided in Section 1901.23, Revised Code; the sheriff has no such duty with respect to legal process directed to him by a municipal court whose territory lies within his county.

3. A judgment rendered by a municipal court may, under authority of Section 2329.04, Revised Code, be made a lien upon the lands and tenements of the judgment debtor only as provided in Section 2329.02, Revised Code.

Columbus, Ohio, February 11, 1959

Hon. George Cleveland Smythe, Prosecuting Attorney  
Delaware County, Delaware, Ohio

Dear Sir:

I have your request for my opinion with regard to the duty of the county sheriff in the matter of executions, attachments, garnishments, process in aid of execution and other process directed to him by municipal courts both within and without the county. In this connection you have invited my attention to an Opinion of this office, being Opinion No. 2491, Opinions of the Attorney General for 1953, p. 141, Section 2329.02, Revised Code, as amended by the 102nd General Assembly in Amended House Bill No. 616, 127 Ohio Laws 798, and two recent decisions of municipal courts reported in 75 Abs., 412 and 76 Abs., 341.

Your specific questions are as follows:

“What is the duty of the sheriff to enter said process on the Foreign Execution Docket maintained by the sheriff?”

“If the sheriff has a duty to serve said process issued by a foreign municipal court, what is his duty concerning similar process issued from the local municipal court?”

“How can an execution issued by a foreign municipal court be made a lien on real estate in this county without complying with Section 2329.02, R.C.?”

“Since a judgment rendered by a foreign municipal court can now be filed locally under Sec. 2329.02, R.C., and process issued to the local sheriff on the certificate of judgment, does that change his duty as expressed in the former opinion first referred to?”

The syllabus of Opinion No. 2491, *supra*, reads:

“A judgment creditor in any municipal court of the state, has a right to require an execution to be issued by the clerk of that court against the personal property of a judgment debtor situated in another county, and it is the duty of the sheriff of such county to receive and execute the same.”

Section 2329.02, Revised Code, effective September 16, 1957, provides:

“Any judgment or decree rendered by any court of general jurisdiction, including district courts of the United States, within this state shall be a lien upon lands and tenements of each judgment debtor within any county of this state from the time there is filed in the office of the clerk of the court of common pleas of such county a certificate of such judgment, setting forth the court in which the same was rendered, the title and number of the action, the names of the judgment creditors and judgment debtors, the amount of the judgment and costs, the rate of interest, if the judgment provides for interest, and the date from which such interest accrues, the date of rendition of the judgment, and the volume and page of the journal entry thereof.

“No such judgment or decree shall be a lien upon any lands, whether or not situated within the county in which such judgment is rendered, registered under sections 5309.02 to 5309.98, inclusive, and 5310.01 to 5310.21, inclusive, of the Revised Code, until a certificate under the hand and official seal of the clerk of the court in which the same is entered or of record, stating the date and purport of the judgment, giving the number of the case, the full names of the parties, plaintiff and defendant, and the volume and page of the journal or record in which it is entered, or a certified copy of such judgment, stating such facts, is filed and noted in the office of the county recorder of the county in which the land is situated, and a memorial of the same is entered upon the register of the last certificate of title to the land to be affected.

“Such certificate shall be made by the clerk of the court in which the judgment was rendered, under the seal of said court, upon the order of any person in whose favor such judgment was rendered or upon the order of any person claiming under him, and shall be delivered to the party so ordering the same; and the fee therefor shall be taxed in the costs of the action.

“When any such certificate is delivered to the clerk of the court of common pleas of any county in this state, the same shall be filed by such clerk, and he shall docket and index it under the names of the judgment creditors and the judgment debtors in a judgment docket, which shall show as to each judgment all of the matters set forth in such certificate as required by this section. The fee for such filing, docketing, and indexing shall be taxed as increased costs of such judgment upon such judgment docket and shall be included in the lien of the judgment.

“When the clerk of any court, other than that rendering the judgment, in whose office any such certificate is filed, has docketed and indexed the same, he shall indorse upon such certificate the fact of such filing with the date thereof and the volume and page of the docket entry of such certificate and shall return the same so indorsed to the clerk of the court in which the judgment was rendered, who shall note upon the original docket the fact of the filing of said certificate, showing the county in which the same was filed and the date of such filing. When such certificate is filed, docketed, and indexed in the office of the clerk of the court which rendered the judgment, such clerk shall likewise indorse the certificate and make like notation upon the original docket.

“Each such judgment shall be deemed to have been rendered in the county in which is kept the journal of the court rendering the same, in which journal such judgment is entered.

“Certificates or certified copies of judgments or decrees of any courts of general jurisdiction, including district courts of the United States, within this state, may be filed, registered, noted, and memorials thereof entered, in the office of the recorder of any county in which is situated land registered under sections 5309.02 to 5309.98, inclusive, and 5310.01 to 5310.21, inclusive, of the Revised Code, for the purpose of making such judgments liens upon such registered land.

*“Notwithstanding any other provision of the Revised Code, any judgment issued in a court of record may be transferred to any other court of record. Any proceedings for collection may be had on such judgment the same as if it had been issued by the transferee court.”* (Emphasis added)

Section 2329.04, Revised Code, further provides:

“Judgments of probate courts, municipal courts, county courts, and other courts inferior to the court of common pleas

may be made liens upon lands and tenements of a judgment debtor within any county of this state only in the manner provided in section 2329.02 of the Revised Code. The certificate of such judgment shall be made by the clerk of any such court or judge of a county court except that as to all judgments mentioned in section 5309.54 of the Revised Code, when the certificate is to be filed in the office of the county recorder in order to obtain a lien upon registered lands, the same shall be procured and issued as provided in said sections. When any certificate of judgment of any such court made by the clerk of such court or judge of a county court has been filed in the office of the clerk of the court of common pleas of any county, and docketed and indexed therein, execution may be issued out of such court of common pleas upon such judgment, and such further proceedings to enforce said judgment may be had as if the same had been rendered in such court of common pleas. If stay of execution of any such judgment is obtained, such facts shall be certified by the clerk of the court rendering the decision or the judge of a county court, to the clerk of the court of common pleas, who shall enter a memorandum of such stay upon the judgment docket. Such certificate of judgment shall be used instead of a transcript in every case where it is or has been provided by law that a transcript of a judgment shall be filed in order to obtain a lien upon the lands."

It should be noted that Opinion No. 2491, *supra*, was concerned with execution against the *personal property* of the *judgment debtor* located in a county or counties other than that in which the court rendering the judgment is situate. Thus stated the opinion is correct and I do not consider the new provisions of Section 2329.02, *supra*, to have changed the law in this regard.

In the cases to which you have directed my attention the issue was the jurisdiction of the municipal court to issue process in aid of execution to the sheriff of a foreign county to be served on the *debtor* of the judgment debtor. As stated in *McElfresh v. McElfresh*, 8 Abs., 254, a proceeding in aid of execution is an independent and separate proceeding. In the opinion, per Hornbeck, J., it is stated:

"\* \* \* an action in the nature of a creditor's bill, or proceedings in aid of execution, are independent and separate proceedings in which may be instituted in any court having jurisdiction to entertain them whether or not it is the same court that entered the original judgment."

By the very nature of the proceeding, a garnishment action requires a third person to respond to the order of the court with respect to a debt

owing by such third person to the judgment debtor. For such a proceeding to be had there must be express statutory authority. As stated in 22 Ohio Jurisprudence 2d, 21:

“Executions and proceedings under them are the subject of minute statutory regulation, and the provisions of an execution statute must be strictly construed and followed.”

The jurisdiction of municipal courts in issuing orders in aid of execution is contained in the following provisions:

Section 1901.18, Revised Code:

“Subject to section 1907.17 of the Revised Code, a municipal court has original jurisdiction within its territory:

“\* \* \*”

“(E) In any action or proceeding to enforce the collection of its own judgments, or the judgments rendered by any court within the territory to which such municipal court has succeeded, and to subject the interest of a judgment debtor in personal property to satisfy judgments enforceable by the municipal court;”

Section 1901.19, Revised Code:

“Subject to section 1901.17 of the Revised Code, a municipal court has jurisdiction within the limits of the county or counties in which its territory is situated:

“\* \* \*”

“(B) To issue executions on its own judgments;

“(C) In any action or proceeding, whether legal or equitable, to enforce the collection of its own judgments;

“\* \* \*”

“(F) To issue and enforce any order of attachment;

“(G) In any action or proceeding in the nature of creditors’ bills, and in aid of execution to subject the interest of a judgment debtor in personal property to the payment of a judgment of the court;”

Section 1901.23, Revised Code:

“Writs and process in a municipal court shall be served, returned, and publication made in the manner provided for service, return, and publication of summons, writs, and process in the court of common pleas.

“In any civil action or proceeding at law in which the subject matter of the action or proceeding is located within the territory or a defendant resides or is served with summons within said territory, the court may issue summons, orders of interpleader, all other writs, and mesne and final process, including executions necessary or proper for the complete adjudication of the issues and determination of the action, *to the bailiff for service in the county or counties, in which the court is situated and to the sheriff of any other county against one or more of the remaining defendants.*

“All warrants, executions, subpoenas, writs, and processes in all *criminal and quasi-criminal* cases may be issued to the bailiff of the court, a police officer of the appropriate municipal corporation, or *to the sheriff of the appropriate county.*” (Emphasis added)

In the case of *Gibson v. Summers Construction Co.*, 163 Ohio St., 220, the Supreme Court considered the jurisdiction of municipal courts and held that the general provisions of Section 1901.19 (E), Revised Code, purporting to confer jurisdiction upon a municipal court within the limits of the county or counties in which its territory is situated did not enlarge or extend the jurisdiction of the court beyond that specified in Section 1901.02, Revised Code.

Where the power of the court is sought to be used against a third party allegedly owing money to or having property of the judgment debtor I deem the principle established by the Supreme Court in the *Gibson* case, *supra*, to be equally applicable.

In answer to your first question it is my opinion that the sheriff is required to enter on the foreign execution docket and to execute such process directed against the personal property of the judgment debtor by a foreign municipal court. Opinion No. 2491, Opinions of the Attorney General for 1953, p. 141, approved and followed.

Section 1901.23, *supra*, provides the answer to your second question when considered with the decision of the Supreme Court in the *Gibson* case, *supra*. The sheriff is required to perform those services required by law as commanded by Section 311.08, Revised Code:

“The sheriff shall execute every summons, order, or other process, make return thereof, and exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law.

“In an action in which the sheriff is a party, or is interested, process shall be directed to the coroner. If both these officers are interested, the process shall be directed to, and executed by, a person appointed by the court of common pleas or a judge thereof.”

Unless the statutes provide for the issuance of legal process to the sheriff, the sheriff is not bound to execute such process. I find no authority for a municipal court to issue process in civil cases to the sheriff of the county in which such court is situated. The final paragraph of Section 1901.23, *supra*, provides for the issuance of process in criminal and quasi-criminal cases “to the sheriff of the appropriate county.” From the context of Sections 1901.23 and 1901.32, Revised Code, the “sheriff of the appropriate county” has reference to the sheriff of any county situate outside the county or counties in which the particular municipal court is located.

Therefore, in specific answer to your second question you are advised that the sheriff is required to execute legal process in civil cases directed to him by municipal courts whose territory lies wholly outside his county as provided in Section 1901.23, Revised Code; the sheriff has no such duty with respect to legal process directed to him by a municipal court whose territory lies within his county.

The answer to your third question is found in the language of Section 2329.04, Revised Code, effective January 1, 1958. By the express terms of this section “Judgments of \* \* \* municipal courts \* \* \* may be made liens upon the lands and tenements of a judgment debtor within any county within this state only in the manner provided in Section 2329.02 of the Revised Code.”

I do not consider the newly enacted provisions of Section 2329.02, *supra*, to have affected the holding of Opinion No. 2491, *supra*, since that opinion by its very terms dealt only with *personal* property and Sections 2329.02 and 2329.04, *supra*, relate to liens upon *real* property. The duties of the sheriff are not changed in either respect; with relation to foreign executions directed at personal property of the judgment debtor, the sheriff is required to execute the writ and real property is subject to the judgment being made a lien as provided in Sections 2329.02 and 2329.04, Revised Code.

Therefore, in sum, it is my opinion and you are accordingly advised that:



1. The sheriff is required to enter on the foreign execution docket and to execute such process directed against the personal property of the judgment debtor by a foreign municipal court. Opinion No. 2491, Opinions of the Attorney General for 1953, p. 141, approved and followed.

2. The sheriff is required to execute legal process in civil cases directed to him by municipal courts whose territory lies wholly outside his county as provided in Section 1901.23, Revised Code; the sheriff has no such duty with respect to legal process directed to him by a municipal court whose territory lies within his county.

3. A judgment rendered by a municipal court may, under authority of Section 2329.04, Revised Code, be made a lien upon the lands and tenements of the judgment debtor only as provided in Section 2329.02, Revised Code.

Respectfully,  
MARK McELROY  
Attorney General