

in accordance with Section 1 of House Bill No. 17, 88th General Assembly, heretofore mentioned.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

2560.

SERVICE OF SUMMONS—HOW MINOR MAY BE SERVED IN CIVIL ACTION.

SYLLABUS:

1. *Under the provisions of Sections 11286 and 11291 of the General Code, service may be made upon a minor in a civil action by delivering a copy of the summons with the endorsement thereon to said minor personally or by leaving a copy at his usual place of residence. Also a copy of said summons must be served upon his guardian or father in the same manner. If neither can be found, then a similar service must be made upon his mother or the person having the care of such infant or with whom he lives.*

2. *In the event the service is made under the provisions of Section 10781 of the General Code, in connection with the sale of real estate by an executor or an administrator and service is made by the plaintiff or some person other than the sheriff, summons must be served by personally delivering copies to the minor, and guardian, father, mother or custodian, as the case requires.*

COLUMBUS, OHIO, November 21, 1930.

HON. R. S. CUNNINGHAM, *Prosecuting Attorney, Lancaster, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication requesting my opinion as follows:

“Section 11291 of the General Code provides how the service of summons on minors in civil actions must be made.

We request your opinion as to whether or not it is necessary to have personal service on minors or whether summons being left at their place of residence is sufficient, assuming, of course, that the guardian or father is served as provided in said section.”

Section 11291, to which you refer, provides:

“When the defendant is a minor the service of summons must be upon him, and also upon his guardian, or father; or, if neither can be found, upon his mother, or the person having the care of such infant, or with whom he lives. The manner of service must be the same as in the case of adults, and shall be made on such persons, in the order named herein.”

In analyzing the above section, it will be observed that a minor is to be served in the manner that service is made upon adults.

Section 11286, which relates to service generally and which, of course, refers to adults, provides:

"The service shall be made at any time before the return day, by delivering a copy of the summons, with the indorsements thereon, to the defendant personally, or by leaving a copy at his usual place of residence; or, if the defendant is a partnership sued by its company name, by leaving a copy at its usual place of doing business, or with any member of such partnership. The return must be made at the time mentioned in the writ, and the time and manner of service shall be stated on the writ."

In connection with your inquiry, it is necessary to analyze the provisions of Section 11286, in order to arrive at the proper method of service upon minors. The latter section expressly provides that service shall be made by delivering a copy of the summons with indorsements thereon to the defendant personally or by leaving a copy at his usual place of residence. It is believed that the practice quite generally adopted by sheriffs in serving minors in civil actions is to have a copy of the summons delivered personally to the minor. While this custom is commendable in view of the rights of a minor, it is not believed to be a requirement in order to make a valid service. Evidently the practice of personal service has grown up out of an abundance of precaution to preserve the minor's interest and to eliminate all possible questions as to the legality of any such proceeding.

In this connection, it may be noted that Section 10781 of the General Code, which relates to the service in connection with the sale of lands by executors and administrators, provides that service of summons shall be made as in other civil actions. The section then contains an exception with reference to the granting of consent in writing by all persons in interest and provides for legal guardians granting consent for their wards except guardian of the person only. The section further provides that unless it is otherwise ordered by the court, the summons may be served by the plaintiff or other person "by copy personally." Therefore, it would appear that when a service is made under Section 10781, General Code, by the plaintiff or person other than the sheriff, the summons is to be delivered to the defendant personally whether the defendant be a minor or adult. The provision of the section last quoted may also account for the rule usually adopted in cases of civil procedure with reference to a personal service being made.

However, as hereinbefore stated, it is believed that the statutes do not require a personal service upon a minor but he may be served in the same manner as adults. I have been unable to find any cases in Ohio directly on the question you present; however, the statutes would seem to be clear and unambiguous upon this question.

Respectfully,

GILBERT BETTMAN,
Attorney General.