



STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

**Curt T. Schneider**  
Attorney General

November 5, 1975

ATTORNEY GENERAL OPINION NO. 75-417

Mr. Charles V. Hamm  
General Counsel, Legal Division  
Department of Social and  
Rehabilitation Services  
State Office Building  
Topeka, Kansas 66612

Attn: Mr. Bruce Roby

Re: Civil Procedure--Service of Process--Garnishment

Synopsis: Service of garnishment orders upon the State of Kansas must be made, pursuant to K.S.A. 1974 Supp. 60-304(d), upon the Attorney General or an Assistant Attorney General.

\* \* \*

Dear Mr. Hamm:

You advise that questions have arisen concerning the proper service of a garnishment suit against an employee of the State Department of Social and Rehabilitation Services. Because the Department has district offices throughout the state, attempts have been made in several instances to serve garnishment orders by leaving copies thereof at various district offices and with department officials and employees at various levels. You inquire whether service of garnishment orders on the State of Kansas must be made in conformance with the Code of Civil Procedure. I concur fully in your view that the Code of Civil Procedure requires that, in accordance with K.S.A. 1974 Supp. 60-304(d) thereof, garnishment orders be served upon the Attorney General or an Assistant Attorney General.

Mr. Charles V. Hamm  
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November 5, 1975

I enclose a copy of opinions issued by Attorney General Vern Miller, dated April 3, 1972, and February 8, 1973, issued to William Taylor III, Winfield County Counselor, and Sheriff Satterthwaite, of Cowley County, respectively, concluding that garnishment orders issued against the state must be served pursuant to K.S.A. 1974 Supp. 60-304(d).

You advise that some question remains concerning those garnishment suits which have been filed to date in which service has been sought to be made upon the Department by means other than service upon this office. I concur fully in your policy of notifying plaintiff's counsel that proper service has not been made and that service may be made only by service pursuant to K.S.A. 1974 Supp. 60-304(d). As you point out, under *Thompson-Kilgariff General Insurance Agency, Inc. v. Haskell*, 206 Kan. 465, 479 P.2d 900 (1971), when a method of service of process is used which is not in substantial compliance with that prescribed by statute, such service is void and the defect is not remedied by "simply showing that the party sought to be served was made aware that a judicial action was pending which might affect his person, status or property."

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj



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February 8, 1973

William A. Taylor, III  
County Counselor  
Cowley County  
P. O. Box 731  
Winfield, Kansas 67156

Dear Mr. Taylor:

You advise that on various occasions the Cowley County Sheriff has received orders of garnishment issued by the Court of Common Pleas sitting in Wichita, Kansas, which direct service to be made on the defendant and on the Winfield State Hospital and Training Center. The most recent order, you state, joints the Institution and the Kansas Attorney General's office as co-garnishees.

K.S.A. 61-2005(b) states in pertinent part thus:

"The order of garnishment shall be served on the garnishee, together with two (2) copies of the appropriate form for the garnishee's answer prescribed in the appendix to this act, and returned by the officer making service in the same manner as an order of attachment. If the order is served prior to a judgment on the plaintiff's claim, said order shall also be served on the defendant, if he can be found . . ."

Under K.S.A. 61-2001, the provisions of article 7 of chapter 60 relating to attachment govern attachment proceedings in courts of limited jurisdiction. The manner of service of attachment orders prescribed by K.S.A. 60-706(b) (1) is stated thus:

"In addition to the process required under article 3 of this chapter, the order of attachment shall be served upon the defendant, if he can be found, in the same manner as an ordinary summons, and a return made thereof."

William A. Taylor, III  
February 8, 1973  
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K.S.A. 60-304 directs the manner of service of a summons. Subsection (d) prescribes the manner of service upon governmental bodies. Thereunder, service may be made "upon the state or any governmental agency of the state, when subject to suit, by delivering a copy of the summons and petition to the attorney general or an assistant attorney general."

We fully agree with you that an order of garnishment issued by a court of limited jurisdiction upon a state employer must be served upon the Attorney General or an Assistant, and a copy served upon the defendant. There is no statutory warrant for service of any additional summons upon the individual state agency by which the defendant is employed, as, in this instance, the Winfield State Hospital and Training Center.

Yours very truly,

VERN MILLER  
Attorney General

VM:JRM:bg



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VERN MILLER  
Attorney General

April 3, 1972

Fred Satterthwaite  
Sheriff  
Cowley County Court House  
Winfield, Kansas 67156

Dear Sheriff:

An opinion has been requested of us from your County Counselor, Thomas D. Herlocker, concerning garnishment proceedings wherein the State of Kansas through its agencies is garnishee; the defendants, state officers or employees. We believe you have a copy of his letter but we are attaching an additional copy for your reference.

He observes that statutory requirements seem to indicate that any garnishment order emanating from a District Court and directed to the State or one of its agencies should be served on the Attorney General or one of his assistants per K.S.A. 1971 Supp. 60-304(d), under the authority of and in the manner prescribed by K.S.A. 1971 Supp. 60-717, 723, and K.S.A. 60-706(b). We agree. We further feel that when the garnishment order emanates from a court of limited jurisdiction under the authority of K.S.A. 1971 Supp. 61-2005 and 2011, service is mandated in the manner prescribed by sections 2005(b) and 2001, which make reference to K.S.A. 60-706(b).

Apparently, some confusion arises by virtue of the language of K.S.A. 1971 Supp. 60-723 and 61-2011. These consent statutes, which refer to garnishment proceedings directed to the State, state that they shall be brought "...in the same manner and under the same procedure as is now provided by law for bringing such suits and proceedings against private corporations." (Emphasis supplied)

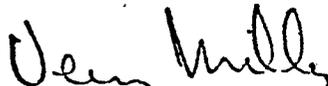
April 3, 1972

However, service upon the Attorney General or one of his assistants is supported, in our estimation, by the greater weight of authority, and the statutory history behind these Sections of our laws. (e.g., Gard, Kansas Code of Civil Procedure Annotated, at page 604)

Thus, a garnishment order directed, for instance, to the Winfield State Hospital and Training Center requires service on the Attorney General or one of his assistants. If you can not find either, then you must make your return showing that the Attorney General or an assistant attorney general was not found. This manner of service is mandated by the cited statutes, particularly, K.S.A. 1971 Supp. 60-304(d); 61-2005(b); and K.S.A. 60-706(b), and, as with any other court order directing personal service to be made upon a person, corporation, infant, or the State, the necessary method or procedure to validly execute this order upon whomsoever is specified must be drawn from the particular statute in question.

Thank you for your continued assistance.

Sincerely,



Vern Miller  
Attorney General

VM:FRT:dh

Enclosure

cc: Thomas D. Herlocker  
Cowley County Counselor

James R. Cobler  
State Controller

Farrel Oard, Personnel Officer  
Winfield State Hospital & Training Center