

OPINION
46-78

September 26, 1946 (OPINION)

COUNTY COURT

RE: Service of Citation by Publication

Re: Section 30-0210, as Amended by Chapter 227 S.L. 1945

Your letter of September 24, addressed to the attorney general, has come to my desk. You ask, in substance, whether or not it is necessary to lay a foundation for service of citation by publication in the county court in the manner in which a foundation for service by publication is made in civil actions in district court.

The source of the present law relating to service of citations is found in section 8544a4 of the 1925 Supplement to the Compiled Laws. This section provided for both personal service and substituted service by publication. With reference to personal service, it made reference to the manner of personal service fixed by the code of civil procedure. The grammatical structure of the provision relating to personal service would seem to be limited, with reference to the code of civil procedure, to strictly personal service. There is no suggestion, whatsoever, in section 8544a4 that any special foundation must be laid for service by publication. Since the Code Commission separated into two sections the provisions for service--(1) section 30-0209 of the Revised Code provides for personal service and refers to the provisions relating to personal service prescribed by the code of civil procedure; and (2) section 30-0210 provides for service by publication. It would seem that the Code Commission considered that the reference to the code of civil procedure applied only in case of personal service.

We have endeavored to determine whether or not our Supreme Court has ever interpreted the provisions for publication found in the 1925 Supplement, and we have been unable to find any such determination. It is, therefore, our opinion that no foundation need be laid for service of citation in county court by publication, other than the general information given the court and required by law to be given by the original petition for the relief in the matter in which the citation is issued. In other words, the provisions of the code of civil procedure, as translated to the Revised Code, with reference to service by publication do not apply to service of citation by publication in court court.

NELS G. JOHNSON

Attorney General