

Fire Marshal—Nuisances—Orders—Publication.

Since section 2753 R. C. M. 1921, requiring the giving of notice of "not less than five nor more than ten days," contains no provision for the service of the order to show cause, resort must be had to the general statutes (sections 9778-9795) for the method of service.

It is within the jurisdiction of the court to recite in the

order to show cause issued under section 2753 that the person to be served resides outside the state, and to extend the answer date so as to allow forty days from the date of mailing for the service of same.

November 8, 1927.

A. G. McNaught, Esq.,
County Attorney,
Roundup, Montana.

My dear Mr. McNaught:

You have requested my opinion whether the provisions of section 2753 R. C. M. 1921, requiring the giving of a notice of "not less than five nor more than ten days," is jurisdictional to the extent that the maximum time of ten days could not be extended by the court. The statute (section 2753) provides that upon the filing of the complaint the judge shall issue an order to show cause returnable at a time and place specified, not less than five nor more than ten days from the date of said order. No provision is made whatever for the service of such order to show cause.

In the absence of any such provision it is my opinion that resort must be had to the general statutes (sections 9778-9795) which provide the manner in which notices and papers may be served. Section 9778 provides that notices **and other papers** may be served in the manner prescribed in this chapter when not otherwise provided by this code.

Sections 9780 and 9781 provide for service by mail, and section 9781 provides for an extension of time within which an act may be done, to the extent of one day for every twenty-five miles distance between the place of deposit and the place of address, but provides that the service is deemed complete at the end of forty days from the date of its deposit in the postoffice.

It is my opinion that it is within the jurisdiction of the court to recite in the order to show cause that the persons to be served reside outside the state of Montana and to extend the answer date so as to allow forty days from the date of mailing for the service of same.

I think it would be safer to follow the above procedure than it would to condemn the property without either actual or constructive notice to the owner, although I am inclined to believe that since the action is in rem or at least quasi in rem, seizure of the property is sufficient to confer jurisdiction. (See discussion in 15 C. J. 801-802.)

Very truly yours,

L. A. FOOT,
Attorney General.