

VOLUME NO. 37

OPINION NO. 126

JUDGMENTS - Execution and enforcement of out-of-county Justice Court judgments; JUSTICES OF THE PEACE - Judgments and executions; out-of-county enforcement; SHERIFFS - Execution and enforcement of out-of-county judgments of Justice Courts; REVISED CODES OF MONTANA, 1947 - Sections 93-404, 93-7401, 93-7402, 93-7404, 93-7405, 93-7312 and 93-7313.

HELD: An execution issued by a justice court may be enforced only within the county in which the justice court has territorial jurisdiction. To enforce a justice court judgment in a different county, the procedures of section 93-7312 and 93-7313, R.C.M. 1947, must be followed. Under those provisions, an abstract of the justice court judgment may be entered in the judgment docket of the district court and the clerk of the district court may then issue an execution directed to the sheriff of any county in the state. An execution issued pursuant to section 93-7313, R.C.M. 1947, is enforceable in the same manner as an execution issued on a judgment of the district court.

29 March 1978

Robert L. Fletcher, Esq.
Sanders County Attorney
Sanders County Courthouse
Thompson Falls, Montana 59873

Dear Mr. Fletcher:

You have requested an opinion concerning the following question:

May an execution issued from a justice court of one county direct the sheriff or constable of another county to levy upon a writ of execution in the second county?

An execution is a court directive to a sheriff, or other officer, requiring him to enforce or levy upon a judgment in a civil case. Your question arises because the sheriff of Sanders County has been requested by some attorneys to levy upon out-of-county justice court executions.

Your question, with regard to a justice court execution, is answered by Pierson v. Daly, 49 Mont. 478, 143 P. 957 (1914). That case held that civil jurisdiction of a justice court extends to the limits of its county and that a justice court execution cannot run to or be enforced in another county. Id., 49 Mont. at 482. The applicable statutory provisions in Pierson are identical in pertinent parts to present statutory provisions for justice court executions. section 93-404, R.C.M. 1947, specifies the territorial jurisdiction of justice court and has been carried forward unamended in the various statutory recodifications since the Pierson case. Similarly, sections 93-7401 to 93-7405, R.C.M. 1947, the current statutes governing the issuance and enforcement of justice court executions, are unchanged since the Pierson case except in immaterial aspects. Section 93-7401 provides that a justice court may issue an execution at any time within five years after entry of judgment; it is identical to the provision in Pierson except for a 1921 amendment changing the time in which the execution may be issued from six to five years, Laws of Montana (1921) ch. 38, sec. 1. Section 93-7402 prescribes the form of execution, and specifies those persons to which it is to be directed, providing in relevant part, "The execution must be directed to the sheriff or to the constable of the county ***." The section, including its directive in the singular to "the sheriff" or "the constable of the county," is unchanged except for deletion of a requirement that the execution specify the township, town or city where the judgment was rendered, Laws of Montana (1973), ch. 491, sec. 21. Section 93-7404, which provides the manner of levy, remains unchanged.

This does not mean that judgments of a justice court are unenforceable in other counties. Specific provision is made for entering a justice court judgment in the judgment docket of the district court. Section 93-7312, R.C.M. 1947. Once entered, the clerk of the district court may issue an execution which is enforceable in other counties. Section 93-7313, R.C.M. 1947, provides in relevant part:

From the time of docketing in the clerk's office, execution may be issued thereon by the clerk to the sheriff of any county in the state, in the same manner and with like effect as if issued on a judgment of the district court.

Both sections 93-7312 and 93-7313, R.C.M. 1947, are identical to predecessor provisions considered in Pierson. The court in Pierson specifically noted these provisions provide the mode of enforcement of a justice court judgment in other counties.

*** But for these provisions there would be no lien, nor could the execution run to any other county than that in which the judgment is rendered, the limits of jurisdiction of the process of a justice court being coextensive with those of the county only.

Pierson, 49 Mont. at 482.

THEREFORE, IT IS MY OPINION:

An execution issued by a justice court may be enforced only within the county in which the justice court has territorial jurisdiction. To enforce a justice court judgment in a different county, the procedures of section 93-7312 and 93-7313, R.C.M. 1947, must be followed. Under those provisions, an abstract of the justice court judgment may be entered in the judgment docket of the district court and the clerk of the district court may then issue an execution directed to the sheriff of any county in the state. An execution issued pursuant to section 93-7313, R.C.M. 1947, is enforceable in the same manner as an execution issued on a judgment of the district court.

Very truly yours,

MIKE GREELY
Attorney General