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ATTORNEY GENERAL  
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SPRINGFIELD

August 30, 1971

FILE NO. S-334

**COURTS:**  
Supplementary Proceedings

Honorable Philip G. Reinhard  
State's Attorney  
Court House  
Rockford, Illinois 61101

Dear Mr. Reinhard:

I have your letter wherein you state:

"Our office institutes some four to five thousand delinquent personal property tax suits each year. In the process of collecting these taxes we take the following procedure:

A Citation to Discover Assets is served on the defendant in accordance with Illinois Revised Statutes, 1969, Chapter 110, para. 73; Chapter 110A, Sec. 277(h). If the defendant does not appear on the date and at the time and place scheduled, we then serve on the defendant a Petition to Show Cause why he should not be held in contempt of court for his failure to appear.

"My inquiry is, if a defendant fails to appear on the Citation to Discover Assets is he in contempt of court at that time, and can a body attachment or bench warrant be issued forthwith to bring him into court to testify, or, is it necessary that a Petition to Show Cause be served on the defendant before a body attachment or bench warrant can be issued? It would greatly facilitate the operation of this office if the added time and expense of preparing, filing, and serving a contempt order could be eliminated."

Section 73 (1) of the Civil Practice Act provides:

"§ 73 Supplementary proceedings. (1) A judgment creditor, or his successor in interest when that interest is made to appear of record, is entitled to prosecute supplementary proceedings for the purposes of examining the judgment debtor or any other person to discover assets or income of the debtor not exempt from execution, a deduction order or garnishment, and of compelling the application of non-exempt assets or income discovered toward the payment of the amount due under the judgment or decree. A supplementary proceeding shall be commenced by the service of a citation issued by the clerk. The procedure for conducting supplementary proceedings shall be prescribed by rules. It is not a prerequisite to the commencement of a supplementary proceeding that an execution has been returned wholly or partly unsatisfied."  
(Ill. Rev. Stat. 1969, ch. 110, par. 73 (1))

Supreme Court Rule 277 provides in part:

"(a) When Proceeding May be Commenced and Against Whom; Subsequent Proceeding Against Same party. A supplementary proceeding authorized by section 73 of the Civil Practice Act may be commenced at any time with respect

to a judgment upon which execution may issue.  
\* \* \* \*."

"(b) How Commenced. The supplementary proceeding shall be commenced by the service of a citation on the party against whom it is brought. \* \* \* \*."

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

(h) Sanctions. Any person who fails to obey a citation, subpoena, or order or other direction of the court issued pursuant to any provision of this rule may be punished for contempt. \* \* \* \*."

The general rule applicable to your question is stated in Corpus Juris Secundum as follows:

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

Before a person can be found guilty of a contempt not committed in the presence of the court, he must have due and reasonable notice of the proceeding. So, ordinarily, there should issue an attachment, or a rule or order to show cause why defendant should not be punished or why an attachment should not issue or other process, the proper or permissible form or forms of process varying with the local practice. \* \* \* \*." (17 C.J.S. p. 194, Contempt §77)

Illinois follows this general rule.

The case of Ex parte Henry Petrie, 38 Ill. 498, involved a Habeas Corpus proceeding. Petrie had failed to make a temporary alimony payment ordered by the court and was brought before the court by means of a body attachment. A hearing was then held, Petrie was found in contempt and sentenced to jail. The court at page 501 stated:

"\* \* \* \* We recognize the principle that it is of the essence of all convictions or adjudications, that the party accused should have an opportunity to be heard in his defense. But that principle does not controvert the regularity, in that regard, of this proceeding, for we find that the petitioner was given that opportunity in as ample a manner as was consistent with the nature of the case. It cannot be said that a party has no proper notice of a proceeding against him, merely because the first intimation he receives of it is by an arrest under a process of the court. In the case of an ordinary writ of causae ad respondendum, which is the first process in a cause under the proper state of facts, the very first notice the defendant receives of the proceeding is by an arrest under the writ. Yet it has never been supposed that such a step in a cause contravened the rule that a party shall first have an opportunity to be heard in his defense before his rights shall be determined.

"We are referred to the case of Langdon ex parte, 25 Vermont 682, as sustaining the view that the petitioner should have received notice of the application for the attachment before the writ could regularly issue. So far from sustaining such a proposition, that case very clearly vindicates the entire regularity of the proceeding in the court of chancery. In that case the party was adjudged guilty of the contempt, and a warrant of commitment was actually awarded and issued, and the party arrested and imprisoned without any previous notice of the proceeding, or any opportunity to purge himself of the alleged contempt; and Chief Justice REDFIELD very properly held that before he was adjudged finally guilty of the contempt, and punished, he should have had an opportunity of being heard. In the case at bar that opportunity was given. The petitioner was not finally adjudged guilty of the contempt until he was arrested and brought before the court for the very purpose of being

heard, and to enable him to purge himself of the alleged contempt if he could do so. And having that opportunity, it was not until after he failed thus to purge himself that he was finally adjudged guilty of the contempt, and a warrant of commitment awarded. \* \* \* "

The Petrie case is quoted and followed in the case of Croucher v. Croucher, 51 Ill. App. 2d 17, pp. 19-20.

Your situation, involving conduct outside the presence of the Court, falls in the category of indirect or constructive, rather than direct, contempt. (The People v. Hassakis, 6 Ill. 2d 463, 466; The People v. Pomeroy, 405 Ill. 175, 179; In Re Estate of Melody, 86 Ill. App. 2d 437, 442) I assume the defendant was properly served with the citation and with the summons issued when the suit for taxes was originally filed. In cases such as yours the defendant cannot be summarily held in contempt: (In Re Estate of Melody, 86 Ill. App. 2d 437, 442) he must be formally charged and advised of the nature of those charges (People v. Vitucci, 49 Ill. App. 2d 171); he is entitled to notice, a hearing, (Hynes v. Johnson, 104 Ill. App. 2d 217) and an opportunity to defend on the issue of his guilt. (The People v. Pomeroy, 405 Ill. 175, 179) Although some cases hold that it is sufficient if a statement of the charges

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is delivered by the Judge orally to the defendant, (MacNeil v. United States, 236 F. 2d 149, 61 ARL 2d 1075) many Illinois cases indicate that written charges in the form of an information, notice, citation, or rule, (The People v. Hagopian, 408 Ill. 618, 621) or petition (The People v. Bloom, 35 Ill. 2d 255, 261) must be served on the defendant. A docket entry may or may not satisfy that requirement. (People v. Vitucci, 49 Ill. App. 2d 171, 175) As in all cases, consideration should be given to making a record that will support the ultimate result on appeal. (The People v. Hassakis, 6 Ill. 2d 463; Hymes v. Johnson, 104 Ill. App. 2d 217, People v. Vitucci, 49 Ill. App. 2d 171, 176)

Therefore, in answer to your inquiry, a defendant cannot be summarily held in contempt of court at the time he fails to appear on a citation to discover assets. The Court must first be advised of the defendant's contemptuous conduct by your calling the Court's attention to the fact of service of the citation and the defendant's failure to appear. The Court should then enter a written rule, citation or order which accurately alleges the basis for the contempt charge. The defendant can be given notice of the charge

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in any one of a number of ways, including service of a copy of the charge along with notice of the time and place of the hearing thereon. Alternatively, the defendant can be served by means of a body attachment under which the sheriff arrests the defendant, gives him a copy of the written charge, and brings him before the Court for the hearing. That attachment is solely for the purpose of bringing the defendant into Court and giving him notice of the pendency of the charge. Once the defendant is in Court, whether by means of his response to service of a written rule and notice of the contempt hearing, or as a result of a body attachment, the Court must then hold a hearing to determine whether the defendant should be held in contempt. At this stage you may choose to forego a hearing on the contempt charge in favor of proceeding with the discovery of assets and entry of appropriate payment or turnover orders.

If you proceed to the point of having the defendant held in contempt, the court should enter a written order with supportive findings.

Very truly yours,

A T T O R N E Y G E N E R A L