



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2019-9

December 17, 2019

The Honorable Chris Kannady
State Representative, District 91
2300 N. Lincoln Boulevard, Room 240
Oklahoma City, OK 73105

Dear Representative Kannady:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following question:

Does 11 O.S.2011, § 22-103 require that service of process upon a municipality always include service upon the municipality’s mayor, or is service upon the mayor required only when the municipal clerk is absent?

I.
BACKGROUND

Service of process in civil matters serves a dual purpose: (1) vesting a court with jurisdiction over the defendant, *see VanNort v. Davis*, 1990 OK CIV APP 95, ¶ 5, 800 P.2d 1082, 1084 (citing *Nikwei v. Babcock*, 822 F.2d 939 (10th Cir. 1987)); and (2) notifying the defendant of the lawsuit “in a manner and at a time that affords the defendant a fair opportunity to answer the complaint and present defenses and objections,” *Cornett v. Carr*, 2013 OK 30, ¶ 11, 302 P.3d 769, 772 (quoting *Henderson v. United States*, 517 U.S. 654, 672 (1996)).

The Oklahoma Pleading Code establishes the methods for service of process in a variety of circumstances. *See* 12 O.S.Supp.2019, § 2004. With regard to municipal defendants, service “shall be made . . . by delivering a copy of the summons and the petition to the officer or individual designated by specific statute[.]” *Id.* § 2004(C)(1)(c)(5). One such statute is Title 11, Section 22-103,¹ which provides as follows:

¹ Section 22-103 is a general service provision. Several other provisions in Title 11 address service for particular types of notices or actions. *See, e.g.*, 11 O.S.2011, § 15-104 (service requirements for protest of initiative or referendum petitions), *id.* § 21-106 (service requirements for petitions for annexation). For federal civil actions against a municipality, service is governed by the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 4(j)(2).

Any notice or process affecting a municipality shall be served upon the municipal clerk, or in his or her absence then upon a deputy municipal clerk and upon the mayor.

11 O.S.2011, § 22-103. In essence, you have asked whether this statute requires service of process to be made upon the mayor (i) in all cases, regardless of whether service is also made upon either the municipal clerk or a deputy clerk, or, alternatively, (ii) only in cases when the municipal clerk is absent and service is made upon a deputy clerk.

II. DISCUSSION

To determine the meaning of a statute, we begin with the text of the statute itself. *See, e.g., Hall v. Galmor*, 2018 OK 59, ¶ 45, 427 P.3d 1052, 1070. The language of a statute is given its ordinary meaning unless context or specific statutory definitions indicate a contrary intent. *See* 25 O.S.2011, § 1. “If the [statutory] language is plain and clearly expresses legislative will, further inquiry is unnecessary.” *Dean v. Multiple Injury Tr. Fund*, 2006 OK 78, ¶ 9, 145 P.3d 1097, 1101 (citation omitted).

When the language of Section 22-103 is considered in light of its punctuation and grammatical structure, its meaning is clear. *See, e.g., Fish v. Kobach*, 840 F.3d 710, 741 (10th Cir. 2016) (“In interpreting [statutory] provisions, we must ‘account for a statute’s full text, language as well as punctuation, structure and subject matter.’” (quoting *United States Nat’l Bank of Oregon v. Indep. Ins. Agents of America, Inc.*, 508 U.S. 439, 455 (1993))). Specifically, Section 22-103 contains a single comma to separate the primary clause—“Any notice or process affecting a municipality shall be served upon the municipal clerk,”—from the secondary clause—“or in his or her absence then upon a deputy municipal clerk and upon the mayor.” This means the municipal clerk alone is the primary recipient of service, with the secondary clause providing the sole alternative in the event of the municipal clerk’s absence. With no comma setting apart the final phrase, “and upon the mayor,” from the rest of the secondary clause, it should be read as part of the secondary clause only and not connected to the primary clause. *See Green v. Huff*, 1981 OK 146, ¶ 14, 636 P.2d 907, 910 (“Relative and qualifying or modifying words, phrases, and clauses should be referred to the word, phrase or clause with which they are grammatically connected.” (citation omitted)).

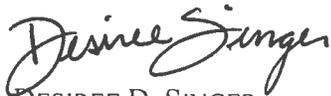
Accordingly, the proper reading of Section 22-103 would require service to be made upon the mayor only in the event of the municipal clerk’s absence.

It is, therefore, the official Opinion of the Attorney General that:

Service of process to a municipality pursuant to 11 O.S.2011, § 22-103 must be made upon the municipality's mayor only in the absence of the municipal clerk, in which case service is required to be made upon a deputy municipal clerk and the mayor.



MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA



DESIREE D. SINGER
ASSISTANT ATTORNEY GENERAL

