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Procedure

Philip A. Trautman
University of Washington School of Law

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PROCEDURE

Service of Process—Nonresident Motorist Service Act. Chapter 75 of the session laws amends RCW 46.64.040, sometimes called the “nonresident motorist service act,” in two important respects.

All forty-eight states and the District of Columbia now have nonresident motorist service statutes which provide that the operation of a motor vehicle upon their highways by a nonresident shall be deemed to constitute a designated public officer in the state the agent or attorney of the nonresident for service of process in actions growing out of the operation of motor vehicles in the state.¹ The purpose of such acts is to provide a means by which service may be had upon a nonresident who is involved in an accident within the state and who then departs, leaving no property.²

By virtue of the Washington statute, as originally enacted, service may be made on the secretary of state, with notice of such service and a copy of the summons or process being sent by registered mail to the defendant.

The legislature has retained the basic structure and purpose of the statute, but has extended its scope in two instances. Whereas previously a nonresident was deemed to have appointed the secretary of state as his agent for service only when the nonresident operated a vehicle on the public highways of Washington, such appointment now follows also from “the operation thereon of his [nonresident’s] vehicle with his consent, express or implied.” This appointment extends to a cause of action growing out of an accident in which the nonresident is involved while operating a vehicle on the state highways “or while his vehicle is being operated thereon with his consent, express or implied.” Thus, it is no longer necessary that the nonresident himself actually be operating the vehicle. It is enough if his vehicle is being operated in this state by another with his consent. Presumably it will be sufficient if the operator is a chauffeur, agent, employee, gratuitous bailee, member of the family, or, for that matter, anyone, so long as the consent factor is present.

One vital question of construction may arise. To what must there be consent? Does the statute mean that it is sufficient for the vehicle

¹ The statutes are listed in *Knoop v. Anderson*, 71 F. Supp. 832, 836-7 (N.D. Iowa 1947).

² The constitutionality of such statutes was settled by *Kane v. New Jersey*, 242 U.S. 160 (1916), and *Hess v. Pawloski*, 274 U.S. 352 (1927).

to be operated with the consent of the nonresident owner, or is it necessary that the consent extend to operation on the highways of the state of Washington? Suppose the owner of a vehicle in Oregon consents to the operation of his automobile by a third person, the owner expressly declaring that the vehicle is not to be taken out of Oregon. The third person drives the car into Washington and is involved in an accident. May personal jurisdiction be acquired over the Oregon owner under the statute by serving the secretary of state and mailing notice of such service and a copy of the process to the Oregon owner?

It would seem, in such an instance, the statute would not apply, even ignoring the potential constitutional issues which might be raised should a contrary construction be adopted. Generally, such statutes have been construed strictly as being in derogation of common law. Thus, here, the phrase, "operation thereon of his vehicle with his consent" would seem to mean consent not only to the operation of the vehicle, but to operation of it upon the highways of Washington.

Suppose, however, the nonresident owner, in consenting to the use of his automobile, remains silent as to where it may be operated. In such an instance may consent to operate in Washington be implied? A New York court, when confronted with this question in interpreting similar statutory language, stated that licensing an automobile in one state with its operation in another raises the presumption that the car is being operated with the consent of the owner.³

The second major change in the statute is the addition of the following sentence,

Likewise each resident of this state who, while operating a motor vehicle on the public highways of this state, is involved in any accident, collision or liability and thereafter within three years departs from this state appoints the secretary of state of the state of Washington as his lawful attorney for service of summons as provided in this section for nonresidents.

The question has arisen in other jurisdictions as to whether the nonresident statutes are applicable to residents who leave the state after an accident. There is authority both ways.⁴ The answer to this question in Washington is now clarified by the amendment as set out above.

³ *Lamere v. Franklin*, 267 N.Y. Supp. 310 (1933). The case involved an employee, but the rationale of the decision would seem to apply more broadly.

⁴ Compare *Ogdon v. Gianakos*, 415 Ill. 591, 114 N.E.2d 686 (1953), with *Wood v. White*, 97 F.2d 646 (D.C. Cir. 1938).

Method of Service of Summons. The legislature also amended the general statute prescribing the method of service of summons.⁵ The amended statute adds a provision for service of summons on any agent, cashier or secretary of a nonresident partnership doing business within this state. Another amendment authorizes service upon a corporation or company not specifically dealt with in the statute by delivery of the summons to the secretary, stenographer or office assistant of the president or other head of the corporation or company or its secretary, cashier or managing agent.

Service on Insurance Companies. Subdivision (6) RCW 4.28.080 provided for service against “an insurance company” by delivery of summons to an agent authorized by the company to solicit insurance within the state. RCW 48.05.200, part of the insurance code, also provided that each authorized foreign or alien insurer should appoint the insurance commissioner as its attorney for service, and that “service of legal process against such insurer can be had only by service upon the commissioner.” The ambiguity existing as a result of these two statutes has been removed by amending subsection (6) of RCW 4.28.080 to provide that service on “a domestic insurance company” may be had by serving an agent, and by adding a new subdivision (7) providing that service on a foreign or alien insurance company is governed by RCW 48.05.200 and .210.

PHILIP A. TRAUTMAN

⁵ Wash. Sess. Laws 1957, c. 202 § 1, amending RCW 4.28.080.