

DIVISION OF HEALTH: Suggested forms of pleading to condemn unsound
FOOD AND DRUG: or contaminated food in accordance with provisions of Section 9861, R. S. Mo. 1939, Reenacted Laws 1943, page 559.

June 8, 1950

6/12/50

FILED
37

Dr. Buford G. Hamilton
Director, Division of Health
Jefferson City, Missouri

Dear Sir:

This will acknowledge your recent request for assistance in the preparation of forms of pleading in the circuit courts for condemnation of unsound or contaminated food to enforce the provisions of Section 9861, R. S. Mo. 1939, Reenacted Laws Mo. 1943, page 559.

We are attaching herewith a suggested form of petition for condemnation; a form for a temporary restraining order and a form for the judgment for condemnation. The forms, of course, may be varied by the prosecuting attorneys to fit the particular facts or circumstances arising in each case.

CONCLUSION

It is, therefore, the opinion of this department that the attached forms of pleading for condemnation of unsound or contaminated food for use in the enforcement of the provisions of Section 9861, R. S. Mo., Reenacted Laws Mo., 1943, page 559, are hereby approved.

Respectfully submitted,

Stephen J. Millett
STEPHEN J. MILLETT
Assistant Attorney General

APPROVED:

CAB
J. W. TAYLOR
Attorney General

SJM:mw

LIBEL FOR CONDEMNATION UNDER SECTION 9861(d) R. S. Mo.
1939, RE-ENACTED LAWS, 1943, PAGE 559.

IN THE CIRCUIT COURT OF _____ COUNTY, STATE OF MISSOURI.

SAMUEL MARSH,
Director, Department of Public
Health and Welfare, for and on behalf
of the Division of Health of the
State of Missouri,

Plaintiff,

vs.

Owner or Possessor of Food.

Defendant.

PETITION FOR CONDEMNATION

I.

This petition is filed by the plaintiff for and on behalf of the Division of Health of the State of Missouri in accordance with the provisions of Section 9861, R. S. Mo. 1939, Re-enacted Laws 1943, page 559, or Section 196.03, R. S. Mo. 1949. Plaintiff prays the seizure for condemnation and confiscation in accordance with the provisions of said section and other provisions of the Food and Drug Laws of the State of Missouri of the following described meat, seafood, poultry, vegetable, fruit or other perishable articles to-wit: (describe in detail the food sought to be condemned.)

II.

That the said articles were seized by the Division of Health

on the _____ day of _____ 195_____ in the County of _____, and the State of Missouri, and that said articles now remain unsold and in the original unbroken packages or cartons in the County of _____ and the State of Missouri in the possession of the said defendant at _____ (give exact location), all within the jurisdiction of this court. That the said articles aforesaid are unsound or contain filthy, decomposed or putrid substances in the following respects, to-wit: (set forth in detail in what respect the food is unsafe or is composed of filthy, decomposed or putrid substances.)

III.

That the articles aforesaid contain substances that may be poisonous or deleterious to health or otherwise unsafe.

IV.

WHEREFORE, in consideration of the premises the plaintiff prays that the articles aforesaid contained in the original packages or cartons aforesaid be proceeded against and seized for condemnation and confiscation and that they be disposed of as the court may direct in accordance with the provisions of the Food and Drug Laws of the State of Missouri and in conformity with the practice of this court; that the court grant a temporary order for the custody, storage or temporary preservation of said articles as may to the court be deemed proper and that any and all other persons or corporations having or pretending to have any right, title or claim to the said articles be cited to appear herein and answer all and singular the allegations herein set forth.

That this court may enter all such orders, decrees and judgments

as may be necessary in the premises to grant full relief to this plaintiff and for the costs of this proceeding, should such costs not be satisfied out of the proceeds of the sale of said articles, if this court should decree the same to be sold.

Prosecuting Attorney within and
for
County, State of Missouri,
Attorney for the Plaintiff,
Address: _____.

TEMPORARY RESTRAINING ORDER UNDER SECTION 9861(d), R. S. Mo. 1939,
REENACTED LAWS, 1943, PAGE 559.

IN THE CIRCUIT COURT OF _____ COUNTY, STATE OF MISSOURI.

SAMUEL MARSH,
Director, Department of Public
Health and Welfare, for and on
behalf of the Division of Health
of the State of Missouri,

Plaintiff,

vs.

Owner or Possessor of Food

Defendant.

TEMPORARY RESTRAINING ORDER

Whereas a petition, or libel, has been filed in this court on
the ___ day of _____, 195___, by _____,
prosecuting attorney within and for the county of _____,
State of Missouri, on behalf of the above named plaintiff, and
against _____, and any other owners of the
property described in said petition.

The said petition, or libel, prays that the above named
defendant and all other persons interested in the property as more
fully set forth in said petition be summoned to answer the premises,
and that said property be condemned as forfeited to the State of
Missouri.

The sheriff of _____, county, State of Missouri, is
hereby commanded to attach the following described meat, seafood,
poultry, vegetables, fruit or other perishable articles, to-wit:

(describe in detail food to be attached) and to detain the same in his custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said petition or libel, that said defendants be and appear before this court, to be held in the courthouse in the city of _____, in the county of _____, State of Missouri, on the ____ day of _____, 195__, at _____, o'clock ____ M., then and there to interpose any claims they may have for the same, and to make their allegations in that behalf. The said sheriff is hereby authorized to store the above described foods in storage facilities that will preserve the same in its present condition, and the cost of said storage shall be taxed as costs in this cause.

Said sheriff shall report on the day set above for said hearing as to what he has done in the premises and then and there make return thereof together with this writ. The clerk of this court shall issue said sheriff a copy of this writ forthwith and deliver the same to the sheriff named above. Writ of Summons shall be issued and directed to the defendant named in the caption and any other persons interested in said food directing them to appear on the date stated above.

Judge of the Circuit Court
of _____ County,
State of Missouri.

FORM FOR CONDEMNATION UNDER SECTION 9861(a) R. S. Mo. 1939,
RE-ENACTED LAWS, 1943, PAGE 559.

IN THE CIRCUIT COURT OF _____ COUNTY, STATE OF MISSOURI.

SAMUEL MARSH,
Director, Department of Public
Health and Welfare, for and on
behalf of the Division of Health
of the State of Missouri,

Plaintiff,

vs.

Owner or Possessor of Food,

Defendant.

JUDGMENT FOR CONDEMNATION

This cause coming on regularly to be heard on the ____ day of
_____, 195____, _____, Prosecuting
Attorney within and for the County of _____, and
State of Missouri, appearing for the plaintiff herein, and
_____, attorney for the defendant and
claimant herein, both parties having announced ready for trial, and
the trial having been held before the court without a jury as
provided by law, and the court having heard all the pleadings and
the evidence and argument of counsel, and having taken said cause
under submission, and

It appearing to the court that this is a libel or petition for
condemnation filed by the Director of the Department of Public
Health and Welfare, for and on behalf of the Division of Health

of the State of Missouri, and that process has been issued pursuant to the petition of said plaintiff and that the sheriff of

_____ County has received into his custody the following described articles of food, to-wit: (describe the same in detail) pursuant to the order of this court, and that he now holds the same in his custody and that due process was given on the _____ day of _____, 195____, to all persons having or claiming to have any interest in said articles charged in said libel or petition to show cause, of any they have, why an order should not be issued from this court as in said libel or petition prayed; and

It appearing to the court that said articles of food as described above are unsound, or contain filthy, decomposed or putrid substances as alleged in said petition.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the aforesaid articles of food, being _____ packages or cartons, more or less, be, and the same are hereby, condemned and forfeited to the State of Missouri; and

It appearing that said articles are now in the possession of the sheriff of _____ County and subject to destruction, the sheriff of said County is hereby ordered to destroy said articles. (or sell same for consumption by livestock)

It is further ordered that the clerk of this court furnish the sheriff of this County with a certified copy of this decree, costs taxed against the defendant.

Circuit Judge of _____
County.