

THE CITY OF NEW YORK
HOUSING AND DEVELOPMENT ADMINISTRATION
DEPARTMENT OF BUILDINGS

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DEPARTMENTAL MEMORANDUM

DATE: March 9, 1970

TO: John T. O'Neill, Commissioner

FROM: Louis Beck, Deputy General Counsel

SUBJECT: Summons and Court Complaint

On February 24, 1970, the Court of Appeals of the State of New York affirmed an opinion rendered by the Appellate Division in the "Matter of Del Giorno". This decision held that under section 434a-7.0 of the code, the police commissioner had no authority to deputize city employees as special patrolmen.

Rule 12 of the rules of the criminal court concurred in by the police commissioner provides for the issuance of summonses in blank to police officers and all other peace officers. These summonses have the same force and effect as if directly issued by the court.

The police department in its regulations makes no distinction between special patrolmen and peace officers. Accordingly, the "yellow summonses" and its substituted "universal summons" have been issued to our department and other departments who have special patrolmen for preparation, issuance and service.

In view of the aforesaid decision of the Court of Appeals, our inspectors are no longer special patrolmen and therefore the universal summons cannot be used by our department.

As for the court complaint (court information):

- 1) Section 58(6) of the New York City Criminal Court Act permits an employee who is a special patrolman to serve a summons for violation of laws which the department is authorized to enforce and to swear to the truth of the complaint before an authorized employee of the department.
- 2) The chief inspector, assistant chief inspector or supervising inspector cannot administer the oath to our inspectors in connection with the execution of a complaint, since the inspectors are not special patrolmen.

Section 57 of the New York City Criminal Court Act provides that the court may issue a summons directing the defendant to appear before it if an information is presented to a judge to the effect that the crime or offense has been committed. The court complaint will have

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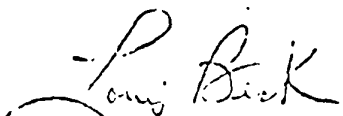
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to be sworn to before the judge and the court will issue a summons. The summons may be served by the complainant, or by a peace officer, or by any other person designated by the judge. Since the Department of Buildings is the complainant, any employee of our department may serve the summons. It is to be noted that the court issued summons cannot be made returnable more than fourteen days after its issuance. Therefore, if it is not served within the fourteen day period, a new summons for an additional fourteen days will have to be obtained from the court.

J. Lee Rankin, Corporation Counsel and Shirley A. Siegel, General Counsel (FDA) have requested that we do not flood the overburdened court with requests for the court summons. It is anticipated that remedial legislation will be enacted into law within the next three weeks so that we will be able to legally use the universal summons. It was agreed that we would bring all hazardous violations into court during this period, but hold back the nonhazardous cases.

Recapitulation:

- 1) No universal summons shall be prepared, issued or served until remedial legislation is enacted into law.
- 2) For all hazardous and emergency cases, the inspector who made the inspection shall take the prepared court complaint (information) and swear to the facts before a judge of the Criminal Court. The court will then affix its signature to the court complaint and will issue a summons. The Assistant Corporation Counsel in the Port of the court handling our cases will assist the inspector to obtain the summons.
- 3) The Corporation Counsel expects to have legislation enacted restoring the use of the universal summons within the next three weeks. Accordingly, he has requested that we do not bring the nonhazardous violation cases to court at this time to alleviate an overburdening of the court.
- 4) However, all cases which are ready for court action should be processed in the borough offices and the court complaints prepared and typed. As soon as legislation is enacted, these cases can then be readily brought into court.


Louis Beck
Deputy General Counsel

LB:MP
cc: Executive staff

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