

CITIES OF FOURTH CLASS: Unless ordinances provide punishment for prisoner escaping custody, prisoner cannot be brought back from another county; if prisoner returns to city, he can be taken into custody and compelled to serve out remainder of sentence.

September 10, 1936.

9-11



Mr. T.H. Edwards, Mayor,
City of Salisbury,
Salisbury, Missouri.

Dear Sir:

This department is in receipt of your letter of September 5 wherein you request an opinion based on the following facts:

"A few days ago, a man pleaded guilty to public drunkenness in our municipal police court, and I sentenced him and committed him to the city marshal, who turned him over to the street commissioner to work on the streets. He escaped from the custody of the street commissioner and probably fled to Moberly.

"Tom Denny, city attorney, holds that we cannot have him picked up at Moberly. Tom says that it is absolutely not an offense under the state law, citing '268 Mo. 481', and he further says that as the man would have to be arrested under the original drunkenness charge, if at all, the city lacks sufficient authority to reach the man in Moberly.

"I cannot agree with Tom in this. It seems unreasonable to me that an offender cannot be made to take his punishment after conviction, if he succeeds in escaping into another county."

It appears that Mr. Denny has made some research in regard to this question and it is our opinion that he is correct in his construction of the case of State v. Owens, 268 Mo. 481, wherein the Court said (l.c. 484-485):

"It is a well established rule that criminal statutes must be strictly construed. Very appropriate to the discussion here is the language used by the Kansas Supreme Court in discussing a section (182) of the Kansas Code which appears to be almost an exact duplicate of Section 4381, Revised Statutes 1909. The court said:

'Section 182 has reference to persons confined in a county jail or held in custody going to such jail. As a rule, penal statutes must be strictly construed, and they cannot be extended beyond the grammatical and natural meaning of their terms, upon the plea of failure of justice. (Remington v. State, 1 Ore. 281; State v. Lovell, 23 Iowa, 304; Gibson v. State, 38 Ga. 571.)

'We are not at liberty to interpolate into the statute "city prison" nor can we judicially determine that a "city prison" is a "county jail." It is therefore our opinion that the matters charged in the information do not constitute any offense within the statute. The omission is one for which the Legislature is responsible. It is probably a casus omissus, which the Legislature may, but the court cannot, supply.' (State v. Chapman, 33 Kan. 134)"

The decision in the case of State v. Owens was discussed in the case of State v. Betterton, 317 Mo. 307. The question involved in the Betterton Case was whether or not there was a variance between the charge and the proof when the evidence showed

that the defendant escaped from a prison farm, whereas the information charged him with escaping from the Missouri State Penitentiary. The court held that there was a fatal variance and that the defendant could not be prosecuted under that section. The Owens Case decides conclusively that the person who pleaded guilty to public drunkenness and was sentenced in your municipal court and subsequently escaped from the custody of the street commissioner did not violate any state statute and therefore could not be brought back to Chariton County and tried for jail breaking.

The only section of the statutes which we are able to locate which might have a bearing on the question is Section 6980, R.S. Mo. 1929, which is as follows:

"All warrants issued by the mayor or police judge shall be directed to the city marshal, the sheriff or any constable of the county, and such warrant shall be executed by the marshal or any policeman of the city, or by the sheriff or any constable of the county, at any place within the limits of said county, and not elsewhere, unless said warrants are indorsed in the manner provided for warrants in criminal cases, and, when so indorsed, shall be served in other counties, as provided for warrants in criminal cases."

There is a vast difference between a crime and prosecution under a city ordinance and prosecution under a state statute. In the case of City of Richland v. Null, 194 Mo. App. 1.c. 180-181, the court, in speaking of the power of a city in respect to prosecutions, said:

"We shall adhere to the rules inscribed upon by the defendant that plaintiff city can exercise only such powers as are granted in express words, or those necessarily incident to, or implied in the powers expressly granted; that the jurisdiction of the mayor, acting as police judge, is limited and must be exercised in strict conform-

ity to the statute and that the complaint referred to in said sections 9332 and 9334 does not mean an indictment or information as used in our constitution and statutes governing prosecutions for criminal offenses; but in such a proceeding as is referred to and authorized by said sections. That 'complaint' is a technical term descriptive of proceedings before magistrates was held in Commonwealth v. Davis, 11 Pick. (Mass.) 432, 436. In 8 Cyc. 407 we find this definition: 'A form of legal process which consists of a formal allegation or charge against a party, made or presented to the appropriate court or officer, as for a wrong done or crime committed; in the latter case generally under oath..... In criminal practice, a charge, preferred before a magistrate having jurisdiction, that a person named (or an unknown person) has committed a specific offense, with an offer to prove the fact, to the end that a prosecution may be instituted.'

Referring to Section 6980, supra, again, if the City of Salisbury has an ordinance with regard to prisoners breaking from the custody of the officers or from the city jail, then we are of the opinion that that Mayor or Police Judge could issue a warrant in compliance with Section 6980 and the person who has escaped could be arrested in the City of Moberly and returned to the City of Salisbury for prosecution under that charge. You do not state in your letter that the City of Salisbury has such an ordinance; therefore, we must assume for the sake or argument that no such ordinance exists, and as a result, as we have stated before, the person in question has committed no crime by leaving the custody of the street commissioner. Hence, we must look solely to the right of the City of Salisbury to return the person to the custody of the street commissioner, there to serve out the term imposed by the Police Judge under the charge of drunkenness.

Police officers are confined in the making of arrests to the limits of the city. They do not have the power to go to

some other county to make arrests nor to have the officers of the other county arrest for them persons who have escaped from their custody.

The right of the police officers of the City of St. Louis to make arrests in St. Louis County is discussed in the case of State ex rel. v. Stobie, 194 Mo. l.c. 61, as follows:

"While the metropolitan police system was created by the State through its General Assembly, it was created for the city. The city and county of St. Louis, by the express provisions of the Scheme and Charter, were made separate, distinct and independent municipalities, and unless we are to absolutely ignore all the principles of local self-government, which has ever been the pride of this great Commonwealth, it must be held under the law now in force, that as police officers, relators were without authority to arrest offenders in St. Louis County for offenses committed in such county."

CONCLUSION

In the last analysis, the ordinances of the City of Salisbury must be the guide in this situation. If the ordinances do not contain any provision which would permit the return of the person in question, it is our opinion that the City of Salisbury does not have authority to return him. However, if this party should return to Salisbury and be found within the jurisdiction of the local officers, he may be again taken into custody and compelled to serve the remainder of his sentence.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General