

SHERIFF:  
WARRANT:

It is unlawful for the city policeman to make an arrest outside of the territorial limits of the city or state under a warrant directed to the sheriff.

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Honorable William Orr Sawyers, Senator  
Missouri State Senate  
Capitol Building  
Jefferson City, Missouri

Dear Senator:

Reference is made to your recent request for an official opinion of this office, which request reads as follows:

"I would appreciate your opinion in the following problem which presents itself in Buchanan County, Missouri.

"The facts are as follows: the St. Joseph Police Department frequently go to the prosecuting attorney's office and take possession of a state warrant issued by a Buchanan County magistrate and fortified with this state warrant they will leave the jurisdiction of St. Joseph, Missouri and go to other cities and other states and bring back prisoners mentioned in the warrant and deliver them to the county jail in the custody of the sheriff. The sheriff then takes the prisoner before the magistrate judge who issued the warrant and has the prisoner arraigned.

"The warrant which is used by the city policeman is directed to 'the State of Missouri to the sheriff of said county' and in the magistrate's warrant the magistrate commands the sheriff to take the said prisoner if he be found in Buchanan County, and him safely keep, and bring before the magistrate to

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answer said complaint. The warrant is directed to no other person than the sheriff, and there is no direction in the warrant to any police officer for the City of St. Joseph, Missouri.

"Please give me your opinion as to whether or not it is lawful for a St. Joseph Policeman to go out of the City of St. Joseph and out into another state and pick up a prisoner on a state warrant without the consent or authority of the sheriff of Buchanan County in executing such a state warrant as before described."

You have stated that the warrant presumably under which the arrest was made is directed to the sheriff of Buchanan County and that there is no direction in the warrant to any police officer for the City of St. Joseph. It is, under such a warrant, the duty of the sheriff to comply with the command contained therein. Although the warrant is specifically directed to the sheriff a valid arrest may be effected by a duly constituted deputy of such officer. The following is found in 6 C.J.S., Arrest, page 576:

"The sheriff to whom a warrant is addressed may act through one of his deputies, although the warrant is not in terms addressed to the deputy. \* \* \*"

You have further stated that the city policeman making the arrest acts without the authority of the sheriff, therefore we must presume that such policeman is not a duly constituted deputy of the sheriff with authority to make such arrest.

We now turn to the authority of a city policeman to make an arrest outside of the territorial limits of the city. Such officers have no such authority in the absence of statute. This rule is stated in the case of *Rodgers v. Schroeder*, 220 Mo. App. 575, l.c. 580, as follows:

"It is generally held, in the absence of any statute conferring the power, that municipal officers, such as marshals and policemen, have no official power to apprehend offenders beyond the boundaries of their municipalities. (*Sossamon v. Cruse*; 133 N.C. 470, l.c. 474; *Martin v. Houck*, 141 N.C. 317; *Butolph v. Blust*,

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41 How. Pr. 481; Lawson v. Buzines (Del.), 3 Har. 416; Page v. Staples, 13 R. I. 306; Moak v. De Forrest, 5 Hill 605; Sullivan v. Wentworth, 137 Mass. 233; Ressler v. Peats, 86 Ill. 275; Krug v. Ward, 77 Ill. 603; Kindred v. Stitt, 51 Ill. 401; McCaslin v. McCord, 116 Tenn. 690; State ex rel. McNamee v. Stobie, 194 Mo. 14, 92 S.W. 191.) And statutes authorizing such officers to make arrests upon view and without process, being in derogation of liberty, are strictly construed. (Low v. Evans, 16 Ind. 486.) \* \* \*."

The powers and duties of police officers of cities of the first class in regard to making arrest outside the territorial limits of the city is found in Section 85.060, RSMo 1949, which provides in part as follows:

"In case they shall have reason to believe that any person within said city intends to commit any breach of the peace or violation of law or order beyond the city limits, or any person charged with the commission of crime in such city, and against whom criminal process shall have been issued, such person may be arrested upon the same in any part of this state by the police force created or authorized herein; provided, however, that before the person so arrested shall be removed from the county in which said arrest is made, he shall be taken before some judge or magistrate of that county, to whom the papers authorizing such arrest shall be submitted; and the person so arrested shall not be removed from said county, but shall forthwith be discharged, unless such judge or magistrate shall approve and endorse said papers."

It is noted that such officer may make an arrest in any part of the state only under certain specified conditions. First, the offense must have been committed within the city, second, criminal process must have been issued against such offender, and third, the arrest must be made on such process.

Following the rule of construction that the expression of one thing excludes another, we are of the opinion that such officer

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may make an arrest outside the territorial limits of the city only if the above three conditions are fulfilled and in no other instance.

It is sufficient to say that under the facts you have presented that a policeman is not making an arrest upon the warrant issued by the magistrate and directed to the sheriff of Buchanan County, since such officer acts without the consent or authority of the sheriff.

In the case of State ex rel. McNamee et al. v. Stobie et al., 194 Mo. 14, the question was presented as to whether or not policemen of the City of St. Louis could make an arrest outside the city for offenses committed outside the city. The court, in its opinion, considered the proposition that such police officers were by statute state officers and the provision relating to the powers and duties of such officers which was substantially the same as Section 85.060, RSMo 1949, quoted above. The court said at l. c. 56:

"\* \* \*It is apparent that these provisions limit the duty to arrest offenders as well as the power to do so. In the first instance they are limited in arresting offenders to the boundaries of the city of St. Louis. Secondly, it is pointed out under what circumstances they may arrest persons within the city, where there is reason to believe that such persons found within the city intend to commit any breach of the peace or violation of law or order, beyond the city limits. Thirdly, where the offense is committed in the city of St. Louis and criminal process has issued against such offender, the arrest may be made upon such process by the police force of such city in any part of the State. Under the provisions of the Scheme and Charter proposed by the thirteen freeholders, by section two, it is provided: 'The city of St. Louis, as described in the preceding section, and the residue of St. Louis county, as said county is now constituted by law, are hereby declared to be distinct and separate municipalities.' Confronted with these provisions it will certainly not be seriously urged that under the provisions of the act of 1861 the police officers of the city of St. Louis were authorized to make arrests in St. Louis county, for offenses

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committed in that county or to perform any other duty in their official capacity in said county, not expressly authorized by the act which created the offices and expressly defined the duties of the incumbents thereof. The express provision in the act defining the duties of the officers must be treated as excluding any authority to perform other functions not embraced in the act. In substance the statute expressly providing the duties to be performed by the officers under the law inaugurating the police system in the city of St. Louis, was a command of the law-making power to the officers, 'This law created the offices you are filling, and you must confine yourselves to the performance of the duties expressly designated by it.' We can conceive of no case where the familiar maxim, 'expressio unius, exclusio alterius,' can be more appropriately applied."

Under the foregoing statutes and cases, we are of the opinion that city policemen not being armed with criminal process which they may execute cannot make a lawful arrest outside of the territorial limits of the city.

#### CONCLUSION

Therefore, it is the opinion of this department that it is unlawful for a St. Joseph city policeman to make an arrest outside of the territorial limits of the city or state under a warrant directed to the sheriff of Buchanan County when such officers are not duly constituted deputies of such officer.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR  
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