

SEARCH WARRANTS:
POLICE:
CITIES, TOWNS & VILLAGES:

Supreme Court Rule 33.02 controls the execution of search warrants. By allowing execution by "peace officers," it thus authorizes officers of a municipal police department in cities of the third class to execute search warrants.

OPINION NO. 306

August 21, 1969

Honorable Joe F. Rains
State Representative
District 115
700 East Tenth
Sedalia, Missouri 65301

Dear Representative Rains:

In your recent request for an opinion you submitted the following questions:

". . . must a search warrant be executed by the Sheriff or a Constable only, or may the officers of the department execute such a warrant? (in cities of the third class) Also, does a 'Constable' include the officers of the Police Department?"

A number of statutes and procedural rules deal with the execution of search warrants. They include the following statutory provisions:

Section 542.270 and 542.290, RSMo 1959, refer to search warrants for allegedly stolen or embezzled property. Section 542.270 states that the warrant be directed to the sheriff or constable. Execution shall be carried out by a "public officer." Section 542.290.

Section 542.380, RSMo Supp. 1967, relating to search warrants for gambling devices, obscene materials and abortion equipment, provides that the warrant be issued to the sheriff or any constable.

The sheriff or "other officer authorized by law" may execute search warrants pursuant to the provisions of the Liquor Control Law. Section 311.810, RSMo 1959.

Section 417.330, RSMo 1959, permitting the issuance of search warrants to investigate the unlawful use of liquid containers, does not indicate who shall execute the warrant.

Honorable Joe F. Rains

A warrant permitting search for salvage property is to be issued to the sheriff. Section 420.280, RSMo 1959.

Section 252.100, RSMo 1959, refers to search warrants for illegally possessed wildlife. It authorizes the execution by a conservation agent, a sheriff, or marshal, or a deputy of such officers.

The rules of criminal procedure of the Missouri Supreme Court clarify the situation and are controlling, in this instance. The Constitution of Missouri, Article V, Section 5, authorizes the Supreme Court to establish rules of practice and procedure for the state judicial system. Supreme Court Rule 33.01 deals primarily with the procedure to be followed to have a search warrant issued. It provides, in part, that a search warrant be ". . . directed to any peace officer. . ." Supreme Court Rule 33.02 states that "Every such search warrant shall be executed by a peace officer and not by any other person."

The drafters of these rules intended to clarify the ambiguities regarding the execution of search warrants caused by the numerous statutes providing for the issuance and execution of search warrants. Peace officers were designated to execute search warrants because of their superior qualifications. See Committee Report on Proposed Rules of Criminal Procedure (1951).

The third class status of Sedalia does not diminish the applicability of the rules of criminal procedure governing search warrants. Section 85.561-1, RSMo 1959, states:

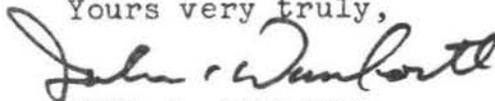
"In all third class cities the members of the police department shall be conservators of the peace, and shall be active and vigilant in the preservation of good order within the city."

As "conservators of the peace," police officers are clearly "peace officers" and thus able to execute search warrants, pursuant to Supreme Court Rule 33.02.

CONCLUSION

It is the opinion of this office that Supreme Court Rule 33.02 controls the execution of search warrants. By allowing execution by "peace officers," it thus authorizes officers of a municipal police department in cities of the third class to execute search warrants.

Yours very truly,



JOHN C. DANFORTH
Attorney General