

CONSTABLE--HIGHWAY PATROLMEN--JUSTICE COURTS: Arrests made by Highway Patrolmen not predicated on warrant issued to a constable. Constable alone is not the only officer of a Justice Court. Constable fees out of Justice Court are limited to statutory allowance and are collectible only where actual service is rendered.

7-18
July 16, 1934.



Honorable J. B. Wentker
Prosecuting Attorney
St. Charles, Missouri

Dear Sir:

This Department is in receipt of your request for an opinion wherein you submit three questions, as follows:

"1st. The Constable contends that in a case of every arrest made by the Patrolmen and Weight Officers that a warrant be directed to him as Constable for service.

"2nd. The Constable also contends that he is to deliver all papers, including warrants, out of the J. P. Courts. It is my contention that under Section 3418 Revised Statutes 1929 in misdemeanor cases out of the J. P. Courts, the Sheriff of the County or Constable of the Township may make the service, and that by reason of Section 13, Page 234, Laws of 1931, the State Patrolmen may also serve criminal process. As to civil process it is my contention that the Sheriff also has certain rights of service but that the matter is not of great moment here because the Constable has been regularly serving civil processes.

"3rd. The Constable claims that he alone has the right to collect fines and costs, and that he should be paid even in those cases in which the Justice has issued no warrant and he has performed no duties. It is my contention that the Constable is to collect such fines and costs only in those cases where execution has been issued and that it is proper for the Justice to receive the money upon pleas of guilty; in fact, Justices have been turning over to the Prosecuting Attorney the Prosecuting Attorney fees and the Prosecuting Attorney has been making his report of such fees collected."

I

Section 3511, R. S. Mo. 1929, provides that upon information being filed a warrant is to issue and reads in part as follows:

"Upon the filing of the information a warrant shall issue for the apprehension of the person charged with the offense, unless he be in custody or voluntarily surrender himself in custody of the court;* * * *."

Thus we see that if the alleged violator is immediately brought before the Justice of the Peace, he is in custody of the court, and under the above Section it is not necessary that a Justice of the Peace first issue a warrant.

Laws of Missouri, 1931, pages 234 and 235 set out the rules and regulations of the State Highway Patrol.

Section 11 provides in part as follows:

"* * * * All fees for the arrest and transportation of persons arrested and witnesses' fees for members of the patrol shall be the same as provided by law for sheriffs and shall be taxed and collected as costs and paid into the state treasury as provided by law."

Section 12 provides in part as follows:

"It shall be the duty of the patrol to police the highways constructed and maintained by the commission; to regulate the movement of traffic thereon; to enforce thereon the laws of this state relating to the operation and use of vehicles on the highways; to enforce and prevent thereon the violation of the laws relating to the size, weight and speed of commercial motor vehicles and all laws designed to protect and safeguard the highways constructed and maintained by the commission. It shall be the duty of the patrol whenever possible to determine persons causing or responsible for the breaking, damaging or destruction of any improved hard surfaced roadway, structure, sign markers, guard rail or any other appurtenance constructed or main-

tained by the commission and to arrest persons criminally responsible therefor and to bring them before the proper officials for prosecution.* * * *."

Section 13 provides in part as follows:

"The members of the patrol are hereby declared to be officers of the state of Missouri and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of this state. The members of the patrol shall have the powers now or hereafter vested by law in peace officers except the serving or execution of civil process. The members of the patrol shall have authority to arrest without writ, rule, order or process any person detected by him in the act of violating any law of the state. * * * *."

Section 14 provides as follows:

"Any person arrested by a member of the patrol shall forthwith be taken by such member before the court or magistrate having jurisdiction of the crime whereof such person so arrested is charged there to be dealt with according to law."

Under the above rules and regulations of the State Highway Patrol the members of the Patrol are declared officers of the State and are vested by law with powers possessed by peace officers, except service of civil process. The members of the State Patrol are further given the authority to arrest any person detected by him in the violation of any law of this State.

Section 7790, R. S. Mo. 1929, provides that the Highway Commission may deputize and appoint persons to enforce the provisions of Sections relating to Motor vehicles, and reads as follows:

"It shall be the duty of the sheriff of each county or city to see that the provisions of sections 7787 to 7792, inclusive, are enforced and any peace officer or police officer of any county or city shall

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have the power to arrest on sight or upon a warrant any person found violating or having violated the provisions of said sections. The sheriff or any peace officer is hereby given the power to stop any such conveyance or vehicle as above described upon the public highway for the purpose of determining whether such vehicle is loaded in excess of the provisions of the preceding sections and if he finds such vehicle loaded in violation of the provisions hereof he shall have a right at that time and place to cause the excess load to be removed from such vehicle; and provided further, that any regularly employed maintenance man of the state highway department shall have the right and authority in any part of this state to stop any such conveyance or vehicle upon the public highway for the purpose of determining whether such vehicle is loaded in excess of the provisions of sections 7787 to 7792, inclusive, and if he finds such vehicle loaded in violation of the provisions thereof he shall have the right at that time and place to cause the excess load to be removed from such vehicle; and provided further, that the highway commission of this state may deputize and appoint any number of their regularly employed maintenance men to enforce the provisions of said sections, and the maintenance men herein delegated and appointed shall report to the proper officers any violations of sections 7787 to 7792, inclusive, for prosecution by said proper officer."

Here again peace officers have the power to arrest on sight or upon a warrant any person found violating the rules and regulations of highways pertaining to width, height, length and weight of motor vehicles.

From the foregoing statutory provisions we are of the opinion that in case of an arrest made by a patrolman or weight officer a warrant need not be directed to the Constable for service. In fact, according to Section 7790 supra, and Section 13 of the Laws of Missouri 1931, supra, the above designated officers may arrest on sight, and under Section 3511 supra, a warrant is unnecessary where the alleged violator is in custody of the court.

However, where the alleged violator is not in custody of the court, and a warrant is necessary, it may be served by the sheriff, patrolman and weight officer, as well as by the constable.

II

Section 11756 R. S. Mo. 1929, sets out the general powers and duties of constables, and reads as follows:

"Constables may serve warrants, writs of attachments, subpoenas and all other process, both civil and criminal, and exercise all other authority conferred upon them by law throughout their respective counties."

Section 11757 R. S. Mo. 1929, provides how the process is served in case of a vacancy or refusal to act, and reads as follows:

"In case of a vacancy in the office of constable in any township, or when the constable is interested in or is a party to the suit, or upon the refusal of the proper constable to serve the civil process directed to the constable of such township, the same may be executed by the constable of any adjoining township in which there may be an acting constable, to be designated by justice issuing such process, in the same manner and with like effect as if executed and returned by the constable of the township so interested, or in which the vacancy exists or refusal occurs. If any township be divided, the constable in office at the time of the division shall continue to be the constable of the township in which his residence is, and another constable shall be appointed for the other township, as in case of vacancy."

In the case of Huhn v. Lang, 27 S. W. 345; 122 Mo. 600 l. c. 606, the Court said:

"The duties and powers of the constable within the jurisdiction of a justice are identical with those of a sheriff, * * * *."

Again in the case of Stegall v. Pigment and Chemical Co., 150 Mo. Ap. 251, l. c. 285 the Court said:

122 "It is said in the case of Huhn v. Lang, 129 Mo. 600, 27 S. W. 345, that the powers and duties of constables within the jurisdiction of the justice are identical with those of a sheriff, and so with reference to this special constable, while his returns, as we hold are not as conclusive, his powers and duties in the service of process which he has power under the statute to make, are as broad as those of the constable himself or of a sheriff.

Although the Huhn and Stegall cases, supra, hold that the duties and powers of the constable within the jurisdiction of a justice are identical with those of a sheriff, yet the converse is not necessarily true. That is, that the duties and powers of the sheriff within the jurisdiction of a justice are identical with those of a constable.

Section 2193 R. S. Mo. 1929 sets out to whom the process is directed and reads in part as follows:

"In all cases not otherwise specially provided for, the process shall be a summons, and every summons shall be directed to the constable of the township in which the justice who granted the same resides.* * *."

Section 2195 R.S. Mo. 1929 sets out the form of a summons and reads in part as follows:

"The state of Missouri, to the constable of _____ township,* * * *."

Section 2196 R. S. Mo. 1929, provides when a justice may empower a suitable person to execute process, and reads as follows:

"Every justice issuing any process authorized by this article, upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, or in all cases where the constable

is a party to the pending suit or is otherwise interested in the result thereof, may empower any suitable person, not being a party to the suit, to execute the same, by indorsement upon such process to the following effect: * * * **

Under Sections 2193, 2195 and 2197, supra, it is clearly set out that the constable is the proper officer to serve warrants issued by any Justice of the Peace, in case of civil process, and the Justice may only empower a suitable person to execute the process when the constable is unavailable or when the latter is a party to the pending suit or otherwise interested. We are of the opinion that only the constable may serve civil processes unless as set out in Section 2197 supra, he is unavailable, etc.

Section 3418 R. S. Mo. 1929 provides as follows:

"Upon the filing of a complaint before a justice of the peace, verified by the oath or affirmation of a person competent to testify against the accused, if the justice be satisfied that the accused is not likely to try to escape or evade prosecution for the offense alleged, it shall be his duty to forthwith forward such complaint to the prosecuting attorney; and it shall be the duty of the complainant to forthwith inform the prosecuting attorney what facts can be proved against the accused, and by what witnesses, and the residence of such witnesses; and if, after investigation of such facts, the prosecuting attorney be satisfied that an offense has been committed, and that a case against the accused can be made, it shall be his duty to immediately file his information before the justice taking the complaint, and give to said justice a list of the witnesses to be subpoenaed on the part of the state; and upon the filing of the information by the prosecuting attorney, as herein provided, with the justice of the peace, or upon the filing of an information by the prosecuting attorney upon his own information and belief, without complaint of a private individual having previously been filed, it shall be the duty of the justice to forthwith issue a

warrant for the arrest of the defendant, directed to the sheriff of the county or constable of the township, or, if no such officer is at hand, then to some competent person who shall be specially deputed by the justice to execute the same, by written indorsement to that effect on such warrant."

Section 11518 R.S. Mo 1929, provides in part as follows:

"Every sheriff shall quell and suppress assaults and batteries, riots, routs, affrays and insurrections; shall apprehend and commit to jail all felons and traitors, and execute all process directed to him by legal authority, including writs of replevin, attachments and final process issued by justices of the peace; * * * *."

It is true that under Section 3418, supra, a justice may issue a warrant directed to the sheriff of the county or constable of the township, but that Section deals with proceedings before justices in misdemeanors. It deals with "criminal and not civil process". The constable (Section 11756, supra,) is a proper officer to deliver writs of attachment, subpoenas, and all other process both civil and criminal, but that does not mean that the constable alone is to deliver all papers out of the Justice of the Peace Courts. Section 11518, supra, sets out the general duties of the sheriff and gives him the power to "execute all process directed to him by legal authority, including writs of replevin, attachments and final process issued by justices of the peace."

III

Section 11777 R. S. Mo. 1929, sets out the fees of constables, and we are of the opinion that in those cases in which the justice has issued no warrant and the constable has performed no duty that he cannot collect fines and costs. The constable can only collect such fines and costs in cases where an execution has been issued by the Justice.

In the case of State ex rel. v. Brown, 47 S. W. 504; 146 Mo. 401, l. c. 406, the court said:

"It is well settled that no officer is

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entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed. State ex rel. v. Wofford, 116 Mo. 220; Shed v. Railroad, 67 Mo. 687; Gannon v. Lafayette Co., 76 Mo. 675. In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.' Williams v. Chariton Co., 85 Mo. 645.

The statute (Section 11777) does not provide that the Constable is to collect fines and costs in those cases in which the Justice has issued no warrant and the constable has performed no duties and, therefore, is not entitled to same.

Section 3456, R. S. Mo. 1929, sets out the duties of officers in the collection of fines, and reads in part as follows:

"It shall be the duty of the justice before whom any conviction may be had under this article, if there be no appeal, to make out and certify, and, within ten days after the date of the judgment, deliver to the treasurer of the county and clerk of the county court each a statement of the case, the amount of the fine and return day of the execution, and the name of the constable charged with the collection thereof; * * * *"

We are of the opinion that the constable alone has the power to collect fines and costs, but only in those cases where execution has been issued. Where the Justice has received the money upon a plea of guilty and execution of course is unnecessary for the money has already been collected.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

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