

MUNICIPAL OFFICERS: MARSHALS: Have no official power to apprehend offenders beyond the boundaries of their municipalities.

December 7, 1935.

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Honorable Louis J. Kick,  
Marshal of Beverly Hills,  
St. Louis County, Missouri.

Dear Sir:

This department is in receipt of your letter of December 4 wherein you state as follows:

"Will you please advise me whether it is legal for this office to issue tickets outside of the limits of Beverly Hills for traffic offenses committed in Beverly Hills in violation of our ordinances such as stop signs, speed and restricted parking.

"We have only a small town and it is necessary if you are going to apprehend traffic violators to pursue them outside of the limits of the town in order to give them arrest notifications.

"Recently it was pointed out me by Mr. Wilson the automobile club attorney that it was illegal for this office to give tickets outside of our limits for offenses that were committed within our limits. Will you kindly advise me on this question and oblige."

Section 7102, R. S. Mo. 1929, sets out the powers and duties of the constable or marshal in a village, as follows:

"The constable or marshal appointed by the trustees of the inhabitants of such towns, giving bond and ample security for the performance of his duties,

is hereby authorized to execute orders and process, arising under the ordinances of said town, and who, within the corporate limits of said town, shall have concurrent power with the constable of the municipal township in which said town is situated to execute all orders, notices, writs and other process and duties that may be executed by the constable of said township, with like effect, and shall receive the same fees therefor."

Section 7127, R. S. Mo. 1929, sets out the powers of a marshal in a village, as follows:

"The town marshal shall be chief of police, and shall at all times have power to make or order all arrests, with proper process, for any offenses against the laws of the state, or of the town, by day or by night, and bring the offender to trial before the proper court, and he shall have power to arrest without process in all cases where any such offense shall be committed, or attempted to be committed, in his presence."

In the case of *Rodgers v. Schroeder*, 287 S. W. 86, 1. c. 863, 220 Mo. App. 575, the court, relying on similar statutes dealing with the powers of marshals to apprehend offenders beyond the boundaries of their municipalities, said:

"The court, at the instance of the plaintiff, gave to the jury an instruction advising them that the defendants had no right to make arrests outside of the limits of the city of Washington without being in possession of a warrant authorizing them so to do. The action of the court in giving this instruction is assigned as error here. The defendants insist that, under the provisions of sections 8239 and 8240, R. S. 1919, they had the power as marshal and assistant marshal of the city of Washington to make arrests without process in cases of offenses against the laws of the city committed in their

presence, and that they were also clothed with power to pursue the plaintiff beyond the limits of the city in order to effectuate his arrest. The sections of the statute relied on are as follows:

"Sec. 8239. The marshal shall be chief of police, and shall have power at all times to make or order an arrest with proper process, for any offense against the laws of the city, and keep the offender in the city prison or other proper place to prevent his escape, until a trial can be had before the proper officer, unless such offender shall give a good and sufficient bond for his appearance for trial. The marshal shall also have power to make arrests without process in all cases in which any offense against the laws of the city shall be committed in his presence.'

"Sec. 8240. There may be one assistant marshal, who shall serve for a term of one year, and shall perform the duties of the marshal at such times as the marshal may be absent, disqualified or unable to act. At other times, the assistant marshal shall render services as a regular member of the police force.'

"The provisions of section 8244 of the same statute are also pertinent, as follows:

"The marshal, assistant marshal and policemen shall have power to serve and execute all warrants, subpoenas, writs, or other process, issued by the police judge of the city, at any place within the limits of the county within which the city is located. The marshal, assistant marshal and all policemen of the city shall be conservators of the peace, and shall be active and vigilant in the preservation of good order within the city.'

"These sections occur in article 4 of chapter 72 of the statute, and relate to cities of the third class.

"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, loc. cit. 474, 45 S. E. 757; Martin v. Houck, 141 N. C. 317, 54 S. E. 291, 7 L. R. A. (N.S.) 576; Butolph v. Blust, 41 How. Prac. (N. Y.) 491; Lawson v. Buzines, 3 Har. (Del.) 416; Page v. Staples, 13 R. I. 306; Moak v. De Forrest, 5 Hill (N. Y.) 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, 94 S. W. 79, 8 Ann. Cas. 245; 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 power of such officers to arrest without process for mere quasi criminal offenses arising from the violation of ordinances is liable to serious abuses, and ought not to be enlarged by judicial construction beyond what is expressly granted or necessarily implied in the statute. It is clear that our statute does not expressly confer upon the marshal, assistant marshal, or policemen the power to make arrests without process beyond the limits of the city, and we see nothing in the statute from which such power may be implied. On the contrary, the provision of the statute expressly authorizing these officers to make arrests beyond the limits of the city upon process issued by the police judge appears to warrant the application of the maxim, 'expressio unius exclusio alterius.' State ex rel. McNamee v. Stobie, 194 Mo. 14, loc. cit. 57, 92 S. W. 191.

"In Sossamon v. Cruse, supra, which was an action to recover damages for an assault committed by a policeman of the town of

Concord, in attempting to arrest the plaintiff without process beyond the limits of the town, for an offense against the ordinances of the town committed in the presence of the officers, the Supreme Court of North Carolina, under a statute similar to our own, ruled as follows:

"We do not think, therefore, that the defendant had a right to pursue the plaintiff beyond the town limits in order to arrest him after he had escaped. When the prisoner had escaped from the custody of the officer he certainly had no more power or authority to rearrest him than he had when the original arrest was made, and his power in the latter case could only be exercised within the town limits. State v. Sigman, 106 N. C. 728 (11 S. E. 520); State v. Stancill, 128 N. C. 606 (38 S. E. 926); Wright v. State, 44 Tex. 645. If he had failed in his first attempt to arrest the plaintiff and the latter had escaped beyond the town limits, the defendant could not have pursued him for the purpose of making the arrest, and it follows, therefore, that his pursuit of the prisoner beyond the limits after he has successfully resisted arrest and escaped was unlawful."

"We conclude that the defendants were without authority to go beyond the limits of the city of Washington to effectuate the arrest of the plaintiff without process, and there was no error in the giving of the instruction complained of. We are not concerned here, of course, with the power of marshals, assistant marshals, and police officers of towns and cities to make arrests for felonies."

Sections 7102 and 7127, supra, do not expressly confer upon the marshal of a village the power to make arrests without process beyond the limits of the city, and we see

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nothing in the statutes from which such power may be implied. In the absence of any statute conferring such power, we are of the opinion that your office has no official power to pursue traffic violators outside of the limits of Beverly Hills in order to give them arrest notifications.

Respectfully submitted,

WM. ORR SAWYERS,  
Assistant Attorney General.

APPROVED:

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

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