

JUSTICES' COURTS: If Justice designates sheriff to serve process and includes same in his minutes, sheriff has power to do so.

May 2, 1936.

58

FILED  
15

Mr. T. O. Carver,  
Prosecuting Attorney,  
Pulaski County,  
Waynesville, Missouri.

Dear Sir:

This department is in receipt of your letter of April 9 wherein you make the following inquiry:

"A controversy has arisen in this county between a Justice of the Peace and a Constable.

"The Justice of the Peace gives all the Justice Court work, such as summons and other writs, to a Deputy Sheriff for serving.

"The Constable claims that he is ready and willing to serve all papers in the Justice Court and that he is entitled to the work.

"Will you kindly advise me if the Justice of the Peace has the right to ignore the Constable and give the work to the Deputy Sheriff?"

Section 2193, R.S. Mo. 1929 relating to justice courts and service of process is 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, or in which the

defendant or one of the defendants resides, except where it is otherwise specially provided and shall command him to summons the defendant or defendants to appear before the justice who issued the same at a time and place named in the summons not less than ten nor more than thirty days from the date thereof, to answer the complaint of the plaintiff, stating also the nature of the suit and the sum demanded."

Section 2194, R.S. Mo. 1929 states:

"On each summons the justice shall indorse the amount of the plaintiff's demand, with the costs that have accrued; and if the defendant shall pay to the officer serving the summons the amount claimed and costs, the summons shall be returned as satisfied, and the suit shall thereupon be dismissed by the justice. But the failure of the justice to so indorse such summons shall in nowise affect the same or any service or proceeding in the case."

Section 2197, R.S. Mo. 1929 provides:

"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: 'At the request and risk of the plaintiff, I authorize \_\_\_\_\_ to execute this writ. E.F., Justice of the Peace.' And the person so empowered shall thereupon possess all the authority of a constable in relation to the execution of such

process, and shall be subject to the same obligations, and shall receive the same fees for his services."

Section 2183 relates to the manner of commencing suits. All of the above sections tend to indicate that the constable is to serve process in his township. However, it has been held that the powers and duties of a constable are co-extensive with those of the sheriff, as was said in the case of Huhn v. Lang, 122 Mo. 1.c. 606:

"It becomes unnecessary to pass upon the other contentions that Kingsbury had no right to turn over the Justice's execution to Clary, his successor. The statute provides that in such case a sheriff shall turn over all unexecuted writs to his successor. Revised Statutes, 1889, sec. 4958. The duties and powers of the constable within the jurisdiction of a justice are identical with those of a sheriff, and the same reasons exist why the unexecuted writs in his hands should be turned over to his successor as in the case of a sheriff. In Vermont and Oregon the word 'sheriff' has been treated in similar statutes as generic, and broad enough to include constables. Winchell v. Pond, 19 Vt. 198; Hume v. Morris, 5 Oregon, 478."

In the case of Stegall v. Pigment & Chemical Co., 150 Mo. App. 251, with reference to private persons deputized to serve process, the Court said (1.c. 285):

"It is said in the case of Huhn v. Lang, 122 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."

In the case of State v. Taylor, 223 Mo. App. 883, it was held that the term "sheriff" may be construed to include "constables". The Court said (l.c. 888):

"Now it will be observed that the statute (Sec. 3925, supra) refers only to the sheriff as the proper person to whom a surrender of the principal may be made by the bail. It is, therefore, contended by respondent that a surrender to the constable is not a compliance with the statute. The term sheriff may be construed as generic and sufficiently broad and comprehensive as to include constables."

#### CONCLUSION

While it is generally recognized that a constable is the chief process officer of a justice court and a sheriff is the chief process officer of the circuit court, yet, as stated in the above decisions, each officer's power is co-extensive with the other insofar as the township is concerned. A deputy sheriff has the same powers as the sheriff with rare exceptions. Hence, the question resolves itself into whether or not the sheriff can serve process in the justice court. We think if the justice designates the sheriff to serve the process and includes the same in his minutes, he has the authority and power to do so.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

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