

SHERIFF - CONSTABLE:

Power to execute state warrants.

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March 16, 1937



Honorable Ernest Binnicker
Assistant Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

Dear Sir:

We acknowledge your request for an opinion dated
March 8, 1937:

"I wonder if your office would be so kind as to furnish an opinion to me on the following matter:

"1. Does a Constable of a township have the right to go out of his own county and arrest a man on a felony or misdemeanor warrant, or is he confined to his own county, or

"2. Does he have the right to go out of his county to return a prisoner where the prisoner had been arrested by the Sheriff or another officer in a foreign county on a felony or misdemeanor warrant.

"3. Does the same ruling apply in the case of a Sheriff.

"Thanking you for your attention in this matter, I am."

Black's Law Dictionary, citing Blackstone's commentations, defines the term "constable" at English Common Law thus:

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"A public civil officer, whose proper and general duty is to keep the peace within his district, though he is frequently charged with additional duties."

In the case of State ex rel. v. Finn, 4 Mo. App. 347, l. c. 352, the office of sheriff in Missouri is defined thus:

"The office of sheriff is one of the oldest known to the common law. It is inseparably associated with the county. The name itself signifies the keeper of the shire or county. * * * * The sheriff was the immediate officer of the king within the shire; received his commission from the king, and directly represented the sovereign power of the State. He was the conservator of the peace within the county; had the safe-keeping of the county jail, and commanded the posse comitatus, or powers of the county. He served the process of the State, and enforced its execution, which, says Coke, is 'the life and fruit of the law.' In this country, allowing for the difference of our system, his function has been similar, and his relation to the sovereign power the same. He is the chief executive officer of the State in his county."

We must now look to the Statutes regulating territorial power of a sheriff and of a constable before we can answer your query on the right of a constable or a sheriff to arrest on a state warrant within and beyond

county boundaries.

Section 11756, R.S. Mo. 1929, provides:

"Constables may serve warrants, writs or 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 3566, R.S. Mo. 1929, provides for the issuance of capias warrants as follows:

"A warrant or other process for the arrest of the defendant indicted may be issued by the court in which such indictment shall have been found or may be pending, or by the judge or clerk thereof, or by any judge of the supreme court, and by no other officers, and may be directed to and executed in any county in this state."

Section 3568, R.S. Mo. provides for the issuance of state warrants pursuant to Grand Jury indictments as follows:

"The warrant shall issue to the sheriff of the county where the indictment or information is filed, unless the prosecuting attorney directs it to be issued to some other county; warrants may be issued to different counties at the same time. The sheriff must execute the warrant and subpoenas immediately after receiving them."

Section 3418, R.S. Mo. 1929, provides for the issuance of state warrants in Justice of the Peace

Courts on misdemeanor complaints,, as follows:

" * * * * * 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 3467, R. S. Mo. 1929, provides for the issuance of state warrants in justice of peace courts on felony complaints, as follows:

"Whenever complaint shall be made, in writing and upon oath, to any magistrate hereinbefore mentioned, setting forth that a felony has been committed, and the name of the person accused thereof, it shall be the duty of such magistrate to issue a warrant reciting the accusation, and commanding the officer to whom it shall be directed forthwith to take the accused and bring him before such magistrate, to be dealt with according to law."

Section 3469, R. S. Mo. 1929, provides:

"warrants issued by any judge of the supreme or circuit or criminal court of any county may be executed in any part of this state; and warrants issued by any other magistrate may be executed in any part of the county within which he is such officer, and not elsewhere,

unless indorsed in the manner directed in the next section."

Section 3479, R.S. Mo. 1929, provides:

"If the person against whom any warrant granted by a judge of the county court, justice of the peace, mayor or chief officer of a city or town shall be issued, escape or be in any other county, it shall be the duty of any magistrate authorized to issue a warrant in the county in which such offender may be or is suspected to be, on proof of the handwriting of the magistrate issuing the warrant to indorse his name thereon, and thereupon the offender may be arrested in such county by the officer bringing such warrant, or any officer within the county within which the warrant is so indorsed; and any such warrant may be executed in any county within this state by the officer to whom it is directed, if the clerk of the county court of the county in which the warrant was issued shall indorse upon or annex to the warrant his certificate, with the seal of said court affixed thereto, that the officer who issued such warrant was at the time an acting officer fully authorized to issue the same, and that his signature thereto is genuine."

Section 3492, R.S. Mo. 1929, provides:

"Whenever any felony shall be committed, and the offender attempt to escape, public notice thereof shall be immediately

given, at all places near where the same was committed, and pursuit shall be forthwith made after the offender by sheriffs, coroners and constables, and all others who shall be thereto required by any such officer; and the offender may be arrested by any such officer or his assistants without warrant."

Section 3494, R. S. Mo. 1929, provides:

"Every sheriff, marshal, coroner, constable or police officer who shall fail or refuse to pursue and arrest any offender, as required by the preceding provisions, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment."

In the leading case of State v. Dooley, 121 Mo. 591, 1. c. 603, 26 S.W. 558, the Supreme Court said:

"The warrant was not in evidence, but it would seem plain that neither Bennett nor Evans, although officers of Lafayette County, had any right to serve a warrant in Saline county, unless it was indorsed by a magistrate of Saline county or by the county clerk of Lafayette county, as provided by section 4024, Revised Statutes, 1889,
* * * "

CONCLUSION

From the foregoing we see that in Missouri the township constable and the county sheriff are both bound to make an arrest on a state warrant, properly in their possession, any place in their county, and in some instances any place in the state.

Where an indictment in a court of record is returned in open court, we find no provision for a state warrant to issue to any constable in the county where the indictment is found, but in such cases the state warrant is only to issue to the sheriff of the county where the indictment is filed, unless the prosecuting attorney directs it to issue to some other county, (See section 3568, supra.).

Where the state warrant is issued on a misdemeanor or a felony complaint, before the justice of the peace, it may be directed to either the county sheriff or the township constable, in which case the state warrant is properly in the hands of either for arrest and return to the venue of the crime. (See Sections 3418 and 3467, supra.). Either have equal power to execute said justice of the peace's state warrants within the county, and either may execute the same in any other county after same is indorsed by a magistrate of that county who has power to issue state warrants, and the same is true if the sheriff or constable get the clerk of the county court of the county issuing the warrant, to certify, sign and seal either upon or annex to the state warrant the fact that the officer who issued the state warrant was authorized to issue same. (See section 3470, supra.).

Where the state warrants are properly issued to any constable or sheriff by a judge of the Supreme Court, Circuit Court or Criminal Court of any county, then either the constable or the sheriff must make an arrest in any part of the state and return the prisoner to the venue of the crime. (See sections 3566 and 3469, supra.).

With, or without, a state warrant, any peace

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officer, including a sheriff and constable, must pursue an escaped prisoner and arrest him without consideration of township or county boundaries. (See sections 3492 and 3494, supra).

If we have not answered your questions you will please communicate with us further.

Respectfully submitted,

Wm. ORR SAWYERS
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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