

CONSTABLES: (1) May serve anywhere in state warrant issued out of any justice court in county; (2) May arrest without warrant if sees offense committed, or with warrant if he has one, and cause prisoner to be arraigned in township where offense was committed, if a misdemeanor if felony, may cause prisoner to be arraigned anywhere in county. (3) If represents himself to be deputy sheriff, and hold no such commission is guilty of im-

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impersonating an officer. (4) Cannot charge fee for service he does not perform. (5) His duty to take prisoner before justice if warrant of arrest was directed to him.

Hon. A. A. Bayles,
Sheriff of St. Francois County,
Farmington, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of May 29th, 1939, presenting several questions pertaining to the powers, duties, and legality of the actions of a constable in your county.



I

"The Constable in question has brought prisoners from Fredericktown, Missouri, St. Louis, Missouri and various other distant points on Warrants issued from Townships in St. Francois County, other than the Township in which he was elected. Would this be legal or not?"

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

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

It is the duty of the constable to serve warrants issued out of any justice court in the county. (See Section 3418, R. S. 1929, on misdemeanors, Sections 3467, 11756, R. S. 1929, on a felony). In the case of Bick v. Wilkerson, 62 Mo. App. 31, it is held that the terms of Section 2380, R. S. 1889 (now section 11756, supra,) authorized a constable to serve process issued out of any justice court in the county.

Section 3469 R. S. Mo. 1929, provides that the warrants of a justice of the peace "may be executed in any part of the county within which he is an officer, and not elsewhere, unless indorsed in the manner directed in the next section." The next section (3470 R. S. 1929) provides the mode by which the warrant of a justice of the peace may be executed in another county. This by the endorsement of said warrant by "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 * * * and thereupon the offender may be arrested in such county by the officer bringing such warrant, * * *." Also, such warrants may be executed in any county in the state "if the clerk of the county court of the county in which the warrant was issued shall endorse 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."

Thus a constable is authorized to execute misdemeanor and felony warrants, issued out of any justice court of his county, throughout his county, and if properly endorsed, such warrants may be executed by the constable in another county or in any county in the state.

It is our opinion that it is legal, if the proper procedure is followed, for a township constable to execute warrants, issued out of any justice court in his county at any place in his county or the state.

II

"This same Constable rides the roads of St. Francois County making arrests with and without Warrants, arraigning prisoners before justices of the peace in Townships other than his own Township. Would this be legal or not?"

What we have said in Part I of this opinion answers that part of this question as to the right of the constable to arrest with a warrant any place in the county and cause his prisoner to be arraigned before the justice court out of which the warrant was issued. This, because, the constable having the right, as above decided, to execute a warrant issued out of any justice court in the county, it necessarily follows that he has the right to bring in the prisoner to be arraigned.

As to said constable's right to do this without a warrant, we see that by Section 11756, supra, constables are empowered to "exercise all other authority conferred upon them by law throughout their respective counties". We assume, for the purpose of this question, that the constable is only making these arrests without a warrant, when he actually sees the offense committed.

In State v. Holcomb, 86 Mo. l. c. 380, the court reaching back into the common law said, "From time immemorial, constables * * * had authority, without warrant, to arrest those whom they saw engaged in an affray, or breach of the peace, and to detain them until they should find proper security."

Again in State v. Pritchett, 219 Mo. 1. c. 706, it is said that a constable is "authorized by the law of this state to arrest persons charged with crime * * * *, when armed with a warrant for that purpose and without warrant when the offense is committed in his presence."

Thus, we think a constable may arrest without a warrant when he sees the crime committed. There is no statute which we can find which confers the authority on him or takes it away. Consequently the common law prevails (Sec. 645 R. S. Mo. 1929). This authority extends to any place in his county because his authority is county-wide. (Sec. 11756, supra; Bick v. Wilkerson 62 Mo. App. 31).

It is our opinion on this question that a constable may arrest with or without (if he sees the crime committed) a warrant any place in his county and arraign the prisoner before a justice in the township where the offense was committed, if a misdemeanor (Sec. 3114 R. S. Mo. 1929) or before any justice in the county if a felony. If with a warrant, the arraignment, of course, is before the magistrate who issued the warrant.

III

"This office has certain information which indicates that this Constable is representing himself in S. Francois and other Counties of Missouri as a Deputy Sheriff when in fact he has no Commission whatsoever as a Deputy Sheriff and holds only the title of a Township Constable. What, if any, penalties are provided by law for a person representing themselves as a Deputy Sheriff for gain, when, as a matter of fact, he is not a Deputy."

Section 4235 R. S. Mo. 1929, provides:

"Any person or persons who shall, in this state, without the authority, exercise or attempt to exercise the functions of, or hold himself or themselves out to any person or persons, company, association or corporation as a deputy sheriff, marshal, policeman, constable or peace officer, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, be punished by imprisonment for not less than three months nor more than one year."

In our opinion if this constable represents and holds himself out as a deputy sheriff of St. Francois County he is violating this statute.

IV

"Where State Patrolmen make certain arrests in various Townships of St. Francois County, would a Constable of St. Francois Township, St. Francois County have a legal right to take the Warrants served by the State Patrolmen and make a return charging arrest, commitment, and mileage for themselves?"

Section 11791 R. S. Mo, 1929, provides,
"Sheriffs, county marshals or other officers shall be allowed for their services in criminal cases
* * * *, etc."

Section 11792 R. S. Mo. 1929, provides, "Sheriffs, county marshals or other officers shall be allowed for their services in criminal cases * * * *, etc.,"

These two sections deal with fees and mileage respectively.

Note the language used - "services in criminal cases." The use of the word "services" denotes that the officer shall have done that for which he charges.

In State ex rel. v. Scott, 270 Mo. 1. c. 153, a county court clerk had charged the fee allowed for extending taxes on the assessment book, when he had not actually extended said tax. The court said on this point:

"That this action (a suit to recover certain illegal fees) would lie to recover back the amount paid the defendant for extending the tax on the assessment book had the work not been done, we have no doubt; for section 11549 Revised Statutes, 1909, under which it claimed, allows the compensation for 'services rendered' in 'extending the tax on the assessment book', and these services are not rendered until the work was done."

The court, however, did not rule the case on that point because the clerk did actually do the work before the suit was instituted. Nevertheless, this obiter statement of the court is indicative of what they would have held had the point been before them. We follow this in ruling the instant question.

It is our opinion that no constable is entitled to fees and mileage for anything unless he or a deputy performs the act for which the charge is made.

V

"When a Constable makes an arrest and brings the prisoner in to the County jail to await trial on a misdemeanor or felony charge, would this Constable have the right to take the prisoner out on the trial date and arraign him before the Justice of the Peace, or would this be the duty of the Sheriff's office to do the arraigning?"

There is no express statute which we can find which seems to answer this question. By Section 3467 R. S. Mo 1929 (felony) it is stated that the warrant shall command the officer to whom directed, "forthwith to take the accused and bring him before such magistrate, to be dealt with according to law." By Section 3418 R. S. Mo. 1929 (misdemeanor) the justice, upon complaint being made, must "issue a warrant for the arrest of defendant."

With respect to felonies it is expressly made the duty of the officer to whom the warrant is directed to bring the prisoner before the justice. On a misdemeanor this is also true, even though there is no statute to that effect. A warrant of arrest is nothing more than a command by the magistrate, to the officer, to apprehend and bring before him a named person. In each instance the command is, in part, to bring the prisoner before the magistrate. That command is directed to the officer to whom the warrant is directed and is not literally obeyed until that officer brings the prisoner before the magistrate. From this we deduce that it is the duty of the officer to whom the warrant of arrest was directed to produce the prisoner before the magistrate at the appointed time. We add that there is no mileage allowance for taking a prisoner from jail to the justice court. Section 11701, R. S. Mo. 1929, provides "no compensation shall be allowed under this section for taking the prisoner or prisoners from one place to

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another in the same county, excepting in counties which have two or more courts with general criminal jurisdiction."

It is our opinion that it is the duty of the officer to whom the warrant of arrest was directed to convey the prisoner apprehended thereunder to the justice court for arraignment.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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LLB/RV