

SHERIFF: A sheriff may serve warrant issued on a misdemeanor out of the Circuit Court in any other county in the State.

January 12, 1939



Honorable G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

Dear Sir:

We have your letter requesting an opinion from this Department, which reads as follows:

"Suppose that I file direct in the circuit court of my county, an information on a misdemeanor. I would do this by virtue of the authority vested in me by sections 3501 and 3502 of the 1929 statutes. Suppose the defendant resides in some other county, other than this county of Morgan. Could the circuit clerk, as clerk of the criminal court issue a warrant for the apprehension of the defendant that could be served by the sheriff of Morgan County, Mo, said warrant being issued to the sheriff of Morgan County Mo.?"

"It is my contention that the clerk of the circuit court of Morgan County, Mo, by virtue of the law that the circuit court has concurrent jurisdiction of any misdemeanor case, a criminal case in which I as prosecuting attorney would file direct in the circuit court, and the circuit clerk would have jurisdiction to issue a warrant to apprehend the defendant, said warrant issued to the sheriff of Morgan County, Mo, and without any further certification, and could be served

by the Morgan County sheriff on the defendant in any county in the state of Missouri.

"The clerk of the circuit court has in his office three blanks, copies of which I have included, which apply to the apprehending of defendants in criminal cases, on information filed in the circuit court. You will see where I have underlined in pencil the clause, ".....be found in your county" The circuit clerk contends that this clause keeps him from issuing a warrant to the sheriff of Morgan County, Mo, where the defendant to be arrested lives outside of Morgan County.

"My further contention is that these forms are irregular and the clause is mere surplusage, and the said form was probably compiled by some printing house, and the sheriff of this county should be able to apprehend and arrest the defendant on such a warrant, any where in the state of Missouri.

"Why should not this clause read, 'wherever he be found.' In fact I am including with this request for an opinion the warrant used by the justices of the peaces in this county in criminal cases, which has just this clause.

"I advised the circuit clerk that he was further guided by sections 3511, and 3568. By sec.3568, it seems to me to give explicit authority that the warrant be issued to our local sheriff to be served by him on the defendant in any county in the state. The circuit clerk contends that sec 3568 applies only to the

law applicable to indictments because art 8 is headed and does deal with indictment in criminal cases by a grand jury.

"If you will strike out the parts of any of these forms and add to if necessary any form for a general capias warrant, I will have some printed for the circuit clerk to use, and keep down this confusion in having warrants issued where the defendant does not happen to live in Morgan County, Mo.

respectfully submitted,

G. Logan Marr"

Section 3501 R. S. Mo., 1929, reads as follows:

"Except as otherwise provided by law, the circuit courts shall have exclusive original jurisdiction in all cases of felony, and concurrent original jurisdiction with and appellate jurisdiction from justices of the peace and police courts of towns and cities in all cases of misdemeanor."

Section 3502 R. S. Mo., 1929, partly reads as follows:

"All felonies shall be prosecuted by indictments or information, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; and all misdemeanors shall be

prosecuted by indictment or by information in the courts having jurisdiction thereof. * * *

It will be noticed by Sec. 3501 that circuit courts have original jurisdiction with the justice courts in regard to the trial of misdemeanors.

Section 3504 R. S. Mo., 1929 reads as follows:

"Informations may be filed by the prosecuting attorney as informant during term time, or with the clerk in vacation, of the court having jurisdiction of the offense specified therein. All informations shall be signed by the prosecuting attorney and be verified by his oath or by the oath of some person competent to testify as a witness in the case, or be supported by the affidavit of such person, which shall be filed with the information; the verification by the prosecuting attorney may be upon information and belief. The names of the witnesses for the prosecution must be indorsed on the information, in like manner and subject to the same restrictions as required in case of indictments."

Under this section the prosecuting attorney may file direct in the circuit court an information charging a misdemeanor.

Section 3509 R. S. Mo., 1929 reads as follows:

"The trial and all proceedings upon any information filed in a court

of record shall be governed by the law and practice applicable to trials upon indictments in said court."

It will be noticed by section 3509 that the procedure in the trial of informations is the same as procedure in the trial of indictments.

Section 3568 R. S. Mo., 1929 reads 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."

By virtue of section 3509, supra, the law as set out in section 3568, supra, which is under article 8, chapter 29, and refers to procedure under indictments, the same procedure can be used on the trial of a case under an information.

Section 3469 R. S. Mo., 1929 reads as follows:

"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."

Under this section warrants issued by a court of record may be executed in any part of the state, providing the procedure, as set out in Section 3470 R. S. Mo., 1929 is followed.

Under section 3470 R. S. Mo., 1929 the main procedure is to have the warrant properly endorsed and a certificate attached by the seal of the court showing that the officer issuing the warrant was fully authorized to do the same.

That a sheriff may serve a warrant in any county of the state as set out in section 3568, supra, was fully upheld in the case of State ex rel Billings, Prosecuting Attorney v. Rudolph, Warden of State Penitentiary, 17 SW (2d) 932, par. 7, where the court said:

"While not ruling the question, some observations on the authority of circuit courts to issue writs of habeas corpus ad prosequendum will not be amiss. If a circuit court issued such a writ, no question of conflicting or territorial jurisdiction would be involved. The writ is equivalent to a warrant for an arrest. It should be executed as warrants are executed. Sections 3909, 3911, and 3814, R. S. 1919. Our courts have power to issue all warrants which may be necessary in the exercise of their respective jurisdictions. Section 2341, R.S. 1919.

"In Ex parte Marmaduke, 91 Mo. 228, loc. cit. 251, 4 S. W. 91, 99 (60 Am. Rep. 250), it is said:

'Independent of any such

statute (Rev. St. 1919, sec. 2341), courts, having been created for the purpose of administering public justice, have, in consequence of their being courts, the inherent right to effectuate their jurisdiction by all process necessary for that purpose. * * * The rule being, that, whenever power of jurisdiction is conferred, everything necessary to make either effectual is implied. 1 Kent. Com. 463, and cas. cit.'

"In re Edward Talbot, 8 Ohio Dec. 744, loc. cit. 747, it is said:

'A court acquires jurisdiction by its own process. If the process of the court be executed upon the person or thing concerning which the court are to pronounce judgment, jurisdiction is acquired. The writ draws the person or thing within the power of the court; the court, once having by its process acquired the right to adjudicate upon a person or thing, it has what is called jurisdiction. This power of jurisdiction * * * is the object of process.'

"In Commonwealth v. Ross, 13 Pa. Dist. R. 493, it is held that a district court has authority to issue such a writ to cause a defendant who is confined in the penitentiary outside of the territorial jurisdiction of the court to be brought before it for trial on an indictment for felony.

"In Ex parte Marmaduke, supra, the

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St. Louis criminal court issued a writ of habeas corpus ad testificandum, which was served in Cole county on the warden of the penitentiary. The authority of that court to issue the writ was not questioned.

"It follows the warden of the penitentiary is ordered to deliver Henry Stocks to the sheriff of Dunklin county, to be taken there for trial on said indictments. It is further ordered that said sheriff return Henry Stocks to the penitentiary on the termination of said trials."

CONCLUSION.

In view of the above authorities it is the opinion of this Department that the clerk of the circuit court of Morgan County, Missouri, may issue a warrant in a misdemeanor case out of the circuit court and directed to the sheriff of Morgan County, who may serve the warrant in any county in the state.

It is also further the opinion of this Department that the three blanks enclosed, which are warrants on informations filed in the circuit court, may be issued by striking out the clause, "be found in your county",

It is further the opinion of this Department that section 3568, supra, applies also to the procedure of trial under an information as well as under indictments, notwithstanding the fact that article 8 is headed and deals

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with indictments in criminal cases by a grand jury.

Respectfully submitted,

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WJB:RW