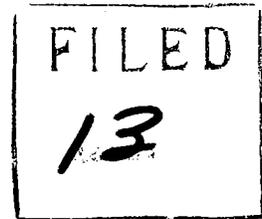


WARRANTS FOR ARREST: A warrant for the arrest of a person charged with a misdemeanor issued out of the magistrate court of a county and directed to all peace officers of the state may be served by any such officer anywhere in the state without any additional action being taken upon the warrant.

November 11, 1959

Honorable Don Burrell
Prosecuting Attorney
Greene County, Courthouse
Springfield, Missouri



Dear Mr. Burrell:

Your recent request for an official opinion reads:

"Recently one of the Sheriffs in a county North of the river refused to serve a warrant in a misdemeanor case because the warrant was certified by the Magistrate Clerk. He returned the warrant unserved indicating that if it was certified by the County Clerk that he would serve it. My question is: In warrants issued out of the Magistrate Courts of Greene County on misdemeanor cases, which warrants subsequently by necessity have to be served in another county, is it necessary that these warrants be certified by the County Clerk or can they be certified as we have done for many years in the past by the Magistrate Clerk? I would very much appreciate an opinion on this matter."

In regard to the above I direct your attention to Section 544.020, V.A.M.S. 1949, which reads:

"Whenever complaint shall be made, in writing and upon oath, to any magistrate 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."

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I also direct your attention to Section 544.090, which reads:

"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 endorsed in the manner directed in Section 544.100."

And also to Section 544.100, which reads:

"If the person against whom any warrant granted by a magistrate, 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 endorse 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 endorsed; 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 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."

It was no doubt upon the basis of these sections and particularly of the last that the sheriff in question acted or rather refused to act.

We now direct attention to Supreme Court Rule 21.09, which reads:

"Any warrant issued under these Rules shall be directed to all peace officers in the State of Missouri and may be executed in any county or municipality of the state by a peace officer thereof * * *."

As to the application of this rule, we direct attention to the committee report on Proposed Rules of Criminal Procedure for the Courts of Missouri and to page 9 of said report and to the commentary upon rule 9 which reads:

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"It is presently provided by 544.020 that warrants be directed to an officer. Section 544.090 says that warrants issued by Supreme, Circuit, or Criminal Court judges may be executed anywhere in the State. By Section 544.100 in fugitive cases warrants issued by the magistrate in the county from which the offender escaped may, when endorsed by a magistrate in the county where the offender is suspected to be, be served in such county. Rule 9 supplants these sections and provides that warrants may be directed to and executed by peace officers anywhere in the State without having possession of the warrant. The endorsement of the warrant is not required. This is a desirable improvement and is in accord with Federal Rule 4 and A.L.I. Code Sections 4 and 24 and Uniform Rule 4(c)1."

In view of the above we believe that the warrant in question, if it was directed to all peace officers in the State of Missouri, should have been served by the sheriff into whose hands it came without endorsement required by Section 544.100, RSMo.

CONCLUSION

It is the opinion of this department that a warrant for the arrest of a person charged with a misdemeanor issued out of the magistrate court of a county and directed to all peace officers of the state may be served by any such officer anywhere in the state without any additional action being taken upon the warrant.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General