

ARREST:
CITIES, TOWNS AND VILLAGES:

A police officer of a third class city can make an arrest under authority of a warrant issued by such city at any place within the limits of the county within which the city is located.

June 2, 1966

Op. No. 75 (1966)
No. 445 (1965)

Honorable J. R. Fritz
Prosecuting Attorney of Pettis County
Courthouse
Sedalia, Missouri



Dear Mr. Fritz:

This is in answer to your request for an opinion concerning the question of whether a police officer of a third class city can make an arrest under authority of a warrant issued by such city outside the territorial limits of the city. Your request suggests some conflict between Section 85.561, RSMo 1959, and Supreme Court Rule No. 37.12.

Section 85.561, supra, enacted in 1955 relating to third class cities reads in part as follows:

" * * * Every member of the police department is also empowered to serve and execute all warrants, subpoenas, writs or other process issued by the police judge of the city at any place within the limits of the county within which the city is located."

Also Section 98.370, RSMo 1959, relating to third class cities reads as follows:

"All warrants issued by the police judge shall be directed to the city marshal, and such warrants may be executed by the marshal, assistant marshal or any policeman, at any place within the county in which the city is located. In case of the absence of the officer from the court, the police judge may deputize some person to execute any process issued by him."

The wording of the statutes are clear that police officers of a third class city can serve and execute warrants issued by the police judge of that city anywhere within the county where that city is located.

Honorable J. R. Fritz

Supreme Court Rule 37.12, which was promulgated in 1960, seems to conflict with the statutes. This rule reads in part as follows:

"Any warrant, other than one issued under Rule 37.48 hereof, may be directed to any peace officer of the municipality, the county or any adjoining county in this state and may be executed in any county or municipality therein by a peace officer thereof.
* * *"

It appears that the rule limits the police officer of a municipality to executing a warrant only in his municipality.

The rule is settled that Supreme Court rules in conflict with statutes respecting procedural matters supercede the statutes and this would be true in this case but for the decision of the Supreme Court in Hacker vs. City of Potosi, 351 SW 2d 760.

In Hacker vs. City of Potosi, supra, decided in 1961 after the promulgation of Supreme Court Rule 37.12 the Supreme Court said this, l.c. 762.

"A policeman of a city of the fourth class is empowered by statute to serve a warrant issued by the mayor or police judge anywhere within the limits of the county. Sections 98.540 and 85.620. * * *"

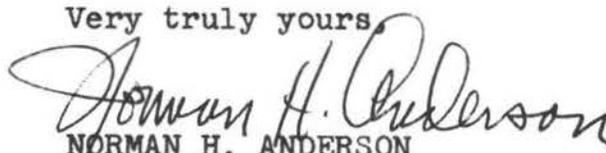
In regard to the power of policemen to execute warrants, the statutes on which Hacker vs. City of Potosi, supra, is based are in all practical effect the same as Sections 85.561 and 98.370, supra. Therefore, in view of Hacker vs. City of Potosi, supra, it is our opinion that a police officer of a third class city can make an arrest under authority of a warrant issued by such city at any place within the limits of the county within which the city is located.

CONCLUSION

It is the opinion of this office that a police officer of a third class city can make an arrest under authority of a warrant issued by such city at any place within the limits of the county within which the city is located.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Walter W. Nowotny, Jr.

Very truly yours,


NORMAN H. ANDERSON
Attorney General