

Opinion No. 64-96

July 27, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General James V. Noble, Assistant Attorney General

TO: John H. Lawless, Jr., City Attorney, P. O. Box 1390, Alamogordo, New Mexico

QUESTION

QUESTIONS

1. May an officer make an arrest based on a warrant issued by a police magistrate court outside of the municipal limits of the city within which such court sits but within the same county?
2. May an officer make an arrest based on a warrant issued by a police magistrate court outside the limits of both the municipality within which such court sits and the county within which municipality is located?

CONCLUSIONS

1. Yes.
2. No.

OPINION

ANALYSIS

The two questions here presented will be considered together since the same general rules of law apply except where modified by statute.

An answer to the questions requires a consideration of the common law jurisdiction of police magistrate courts and of the legislative history of our pertinent statutes.

At common law, police court process was valid only insofar as violations of municipal ordinances of the particular municipality were concerned and then only within such municipal limits. An exception was often made as to areas having a direct bearing on the municipal functions such as watersheds. **McQuillan, Municipal Corporations**, (3rd Ed.) Vol. 6, Sections 24.56 and 24.57 and Vol. 9, Section 27.03. In the same work in Vol. 16, Section 45.18 it is stated:

"Although state police generally have the right to make arrests inside a city, city police usually cannot make arrests beyond the municipal area, except as private citizens."

Our constitution, Article VI, Section 1, provides for the establishment of inferior courts, and Article VI, Section 26 limits the jurisdiction of police magistrate to controversies involving two hundred (\$ 200) dollars or less and controversies in which title to land or the location of boundaries of land are not involved.

Prior to 1939 our legislature made no provision for police magistrate courts or police magistrates independent of justices of the peace. **Stout v. Clovis**, 37, N.M. 30. Sections 14-11-20 and 14-10-19, N.M.S.A., 1953 Compilation provided for the authority of cities to appoint a justice of the peace as police magistrate. However, these statutes only applied to cities having the commission-manager form of government. Our Supreme Court in the case of **Stout v. Clovis**, supra, determined that this was the exclusive method of obtaining a police magistrate in such a case.

Sections 36-2-8 and 36-2-9, N.M.S.A., 1953 Compilation provided that a justice of the peace had county wide jurisdiction although he must hold court within his precinct unless within a city of more than 2,000 population or unless designated to have exclusive jurisdiction over violations of ordinances by a city or town. In such cases he could hold court anywhere within the municipal limits.

Section 90-3515, N.M.S.A., 1953 Compilation provided for the appointment of a justice of the peace to enforce ordinances of **incorporated villages** and Section 14-22-11, N.M.S.A., 1953 Compilation provided similarly that the justice of the peace of the proper precinct had jurisdiction to enforce ordinances of **towns** and **villages**. Except by exclusive appointment no such provision existed as to **cities** not governed by the commission-manager form of government. However, the Supreme Court of this State in the case of **In Re Rae Chang**, 9 N.M. 130, and as a part of its reasoning in arriving at its decision seemed to hold that a justice of the peace of the proper precinct could enforce municipal ordinances.

Following the case of **Stout v. Clovis**, supra, the legislature in 1939 enacted Chapter 230, New Mexico Session Laws of 1939. This Act created police magistrate courts for all incorporated cities and towns and granted the police magistrate the same jurisdiction as formerly exercised by the justice of the peace acting as police magistrate. This act was sub-sequently amended by the provisions of Section 37-1-1, et seq., N.M.S.A., 1953 Compilation and the limitation on the jurisdiction was removed.

There was also in force, at the time of the enactment of the 1939 Act, supra, Section 14-17-6, N.M.S.A., 1953 Compilation, which provided in part that peace officers could serve warrants of arrests for violations of municipal ordinances anywhere within the county where the municipality was located. This section applied to warrants of justices of the peace as well as to those of police magistrates.

There have been numerous opinions of the attorney general dealing with various points involved in your questions. Among these is opinion No. 59-95 appearing at page 154, which held that a policeman could not make an arrest for a violation of an ordinance not committed in his presence without a warrant, and Opinion of the Attorney General No.

61-3 appearing at page 3, which, among other things held that village marshalls could execute warrants of arrest for violation of village ordinances anywhere within the county in which the village was situated.

Although the above cited opinions and cases are not directly in point, on all of your questions, they are of considerable aid, when considered together with the applicable common law and the statutes above cited. It is apparent that, by specific statute, an officer may execute a warrant for arrest property issued by a police magistrate within the limits of the county within which the municipality is located. The answer to your first question is yes.

Turning now to your second question it is equally apparent from the common law that neither the process of a justice of the peace acting as a police magistrate nor the process of a police magistrate is valid outside the municipal limits. The common law, unless abrogated by statute, is the law of New Mexico. Section 4-3-3, N.M.S.A., 1953 Compilation. The common law has been modified to the extent above set forth so as to render such process valid within the county, within which the municipality is located. No statute has been found which would extend this beyond the limits of the county within which the municipality is located. It follows that a warrant of arrest issued by a police magistrate is not valid outside the limits of such county and the answer to your second question must be no.