

## Opinion No. 76-04

February 3, 1976

**BY:** OPINION OF TONEY ANAYA, Attorney General Albert V Gonzales, Assistant Attorney General

**TO:** Mr. Albert Romero, Chief, Local Government Division, Department of Finance and Administration, Executive Legislative Building, Santa Fe, New Mexico 87503

### QUESTIONS

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1. May City of Espanola police officers serve warrants issued by the City of Espanola municipal judge on persons residing outside the city limits but within the territorial boundaries of either Rio Arriba or Santa Fe Counties?
2. May City of Espanola police officers serve warrants, pick up suspects, interview or interrogate persons in either Rio Arriba or Santa Fe Counties if such persons are residing outside the city but within the territorial boundaries of either county and if they are suspected of crimes committed within the limits of the City of Espanola.

#### CONCLUSIONS

1. Yes.
2. Yes.

### OPINION

#### {\*49} ANALYSIS

Section 37-1-2, NMSA, 1953 Comp. (1975 Supp.) provides that the municipal courts may issue warrants in the exercise of their jurisdiction over all offenses and complaints under municipal ordinances. Section 14-12-2, NMSA, 1953 Comp. (1975 Special Supp.) provides as follows:

A. The police officer of a municipality shall:

- (1) execute and return all writs and processes as directed by the municipal judge;
- (2) serve criminal writs and processes **in any part of the county** wherein the municipality is situated. (Emphasis added)

Therefore, § 14-12-2 clearly allows a police officer of a municipality such as the City of Espanola {\*50} to serve arrest warrants, bench warrants or search warrants in any part of the county wherein it is situated. Since the City of Espanola is situated in **both** Rio Arriba and Santa Fe Counties, a City police officer would have authority to serve a warrant issued by the municipal court anywhere within those two counties.

The authority to serve warrants issued by the municipal court would appear to be limited to only those counties in which the municipality is situated since Section 41-1-4(E), NMSA, 1953 Comp. (1975 Supp.) provides that all police officers **authorized to serve** process issued in any criminal action **have jurisdiction to serve** such process **in any county** of the state **except for criminal actions filed in municipal court**. Rule 16(a) and 17(b) of the Rules of Criminal Procedure authorize a "municipal police officer" to serve arrest and search warrants. Sections 41-23-16(a) and 17(b), NMSA, 1953 Comp. (1975 Supp.). Therefore, by reading Sections 14-2-2 and 41-1-4(E) together, we conclude that warrants issued in the exercise of the municipal court's jurisdiction could not be served outside the county in which the municipality is situated. (See Opinion of the Attorney General No. 64-96, dated July 27, 1964, in which the same conclusion was reached in interpreting the former law.)

With regard to the second question, Section 14-12-2, **supra**, further provides that:

A. The police officer of a municipality shall; . . .

(3) **within that municipality.**

(a) suppress all riots, disturbances and breaches of the peace;

(b) apprehend all disorderly persons;

(c) pursue and arrest any person fleeing from justice; and

(d) apprehend any person in the act of violating the laws of the state or the ordinances of the municipality and bring him before competent authority for examination and trial.

B. In the discharge of his proper duties, a police officer **shall have the same powers** and be subject to the same responsibilities **as sheriffs** or constables in similar cases. (Emphasis added)

The authority to "serve warrants" and "pick up suspects", pursuant to arrest warrants, outside that city but within the county is provided by Section 14-12-2 (A) (2), **supra**. The authority to "interview or interrogate" or, in other words, to investigate a person suspected of committing a crime within the city limits but who is found outside the city is provided by Section 14-12-2(B), **supra**.

It has been generally held that in the absence of special statutes, the powers conferred on a police officer must be exercised within the territorial limits of the city. See 62 C.J.S.

Municipal Corporations § 574 (1949). However, in New Mexico, Section 14-12-2 provides that municipal police officers can go outside the city to serve criminal writs and processes and subsection B of that statute provides that a police officer shall have the same powers as a sheriff in similar cases. Section 15-40-2, NMSA, 1953 Comp. provides that it is the duty of the sheriff to apprehend offenders and keep the peace within his county. Although there are no New Mexico cases which consider this matter, the Nebraska Supreme Court interpreted two statutes similar to Sections 14-12-2, **supra**, and 15-40-2, **supra**, and held that a city police officer had a right to stop a vehicle for identification purposes {51} even though the act of stopping took place outside the city limits. **State v. Carpenter**, 181 Neb. 639, 150 N.W.2d 129 (1967), **cert. denied**, 92 U.S. 944, 88 S. Ct. 2288, 20 L. Ed. 2d 1406 (1968). Therefore, the right to investigate extends beyond the boundaries of the city, but Section 14-12-2(A) (3) must be interpreted to mean that such investigations must be related to crimes which occurred within that city limits.