

347

1. COMMON PLEAS COURT—CLERK—WITHOUT AUTHORITY TO ISSUE WARRANT TO MEMBER OF STATE HIGHWAY PATROL FOR ARREST OF PERSON CHARGED BY INFORMATION FILED BY PROSECUTING ATTORNEY.
2. MEMBER OF STATE HIGHWAY PATROL—WITHOUT AUTHORITY TO EXECUTE WARRANT ISSUED UNDER SUCH CIRCUMSTANCES.

SYLLABUS:

1. A clerk of the Common Pleas Court is without authority to issue a warrant to a member of the state highway patrol for the arrest of a person charged by information filed by the prosecuting attorney.

2. A member of the state highway patrol is without authority to execute a warrant issued under such circumstances.

Columbus, Ohio, July 11, 1945

Hon. Seabury H. Ford, Prosecuting Attorney
Ravenna, Ohio

Dear Sir:

Your request for my opinion is at hand, which request reads as follows:

“Under a criminal proceeding in the Common Pleas Court initiated by the prosecuting attorney filing an Information charging a misdemeanor, can the clerk of courts issue a warrant direct to the state highway patrol where the offense charged comes under the arresting power of the state patrol, as set forth in Section 1181-3 of the General Assembly?”

The authority of members of the state highway patrol as peace officers is found in Sections 1181-2 and 1181-3 of the General Code, which sections, in so far as material hereto, respectively read:

Section 1181-2:

“The superintendent and highway patrolmen shall be vested with the authority of peace officers for the purpose of enforcing the laws of the state which it is the duty of the state highway

patrol to enforce and are authorized to arrest without warrant any person who in the presence of the superintendent or any patrolman is engaged in the violation of any such laws; but such patrolmen shall never be used as peace officers in connection with any strike or labor dispute."

Section 1181-3:

"It shall be the duty of the state highway patrol to enforce the laws of the state relating to the registration and licensing of motor vehicles; to enforce, on all roads and highways outside of municipal corporations, the laws relating to the operation and use of vehicles on the highways; to enforce and prevent, on the roads of the state highway system, the violation of the laws relating to the size, weight, and speed of commercial motor vehicles * * * . The superintendent or any state highway patrolman may arrest without a warrant any person who is the driver of or a passenger in any vehicle operated or standing on a state highway, whom he has reasonable cause to believe is guilty of a felony, under the same circumstances and with the same power that any peace officer may make such arrest.

Any person arrested by the superintendent or a patrolman shall forthwith be taken before any court or magistrate having jurisdiction of the offense whereof such person so arrested is charged, there to be dealt with according to law.

* * * The powers and duties conferred on the state highway patrol shall be supplementary to and in no way a limitation on the powers and duties of sheriffs or other peace officers of the state."

From the foregoing statutory provisions, the fact can be drawn that the superintendent and the members of the state highway patrol are peace officers within the provisions of these sections. That is to say, they are special peace officers whose authority extends to such matters, regarding the use and operation of motor vehicles, as are given to them by the statute. You will note in Section 1181-3 the following language:

"Any person arrested by the superintendent or a patrolman shall forthwith be taken before any court or magistrate having jurisdiction of the offense whereof such person so arrested is charged, there to be dealt with according to law."

It would therefore seem to follow that the duty of a patrolman is to bring the accused before the proper court.

Under the laws of Ohio, the process of arrest on warrant seems to be divided into two classes; that is to say, one class wherein the charge is preferred by affidavit and the other in those cases where the party accused is indicted or is charged by information.

In the first category, i. e., offenses charged by affidavit, the provisions of Sections 13432-1 and 13432-9, General Code, control. In the first noted section we find the following language:

“A sheriff, deputy sheriff, marshal, deputy marshal, watchman or police officer, herein designated as ‘peace officers’ shall arrest and detain a person found violating a law of this state, or any ordinance of a city or village, until a warrant can be obtained.”

In the same chapter, under the provisions of Section 13432-9, General Code, we find the following language:

“When an *affidavit charging a person with the commission of an offense* is filed with a judge, clerk or magistrate, if he has reasonable ground to believe that the offense charged has been committed, he shall issue a warrant for the arrest of the accused; if the offense charged is a violation of the laws of the state, such warrant may be directed to and executed by an officer named in Section 1 (13432-1 G. C.) of this chapter, * * * .”

(Emphasis added.)

It would therefore seem to follow that since within their limited field the members of the state highway patrol are peace officers, a warrant based upon an affidavit could be issued to them for service, if the charge was within the limited field of their jurisdiction.

In the second category, those cases wherein the charge is made by indictment or information, we have a different statutory procedure. Section 13437-1 of the General Code reads as follows:

“All provisions of law applying to prosecutions upon indictments, the process thereon and the issuing and service thereof, to commitments, bails, motions, pleadings, trials, appeals and punishments, or the execution of any sentence and all other proceedings in cases of indictments whether in the court of original or appellate jurisdiction, shall, so far as applicable, be applied to informations and all prosecutions and proceedings thereon.”

In Chapter 17, under the title "Process on Indictments" and under Section 13438-1, the following language appears:

"A warrant may be issued at any time by the order of the court, or on motion of the prosecuting attorney after the indictment, information or affidavit is filed; and when directed to the sheriff of the county where such indictment was found or information or affidavit filed, he may pursue and arrest the accused in any county and commit him to the jail or present him in open court, if court be in session."

In this section reference is made to the sheriff of the county where such indictment was found or information or affidavit filed. From the language of this section, it may at first appear that a warrant might be issued to some other peace officer than the sheriff, since the first line of the section reads: "a warrant *may* be issued at any time." However, by referring to the next section i. e., 13438-2, we find the following language:

"When the accused resides out of the county in which the indictment was found or information filed, a warrant may issue thereon, directed to the sheriff of the county where such accused resides or is found. Such sheriff shall arrest the accused and convey him to the county from which such warrant was issued, and there commit him to jail or present him in open court, if court be in session."

By comparing these last two quoted sections, it logically follows that the intent of Section 13438-1 is to establish the procedure by which a warrant is made effective in any county of the state, while Section 13438-2 covers the authority to issue a warrant to the sheriff of the county where the accused is found if such county is not the one wherein the indictment was returned or information filed.

Further on in this chapter (17), I find prescribed procedure for cases in which the accused is already in a state penal institution, or where he has escaped or forfeited his bond, under which circumstances Section 13438-6, General Code, says that the warrant for removal *shall* be directed to the sheriff of the county in which the conviction was had or the indictment or information is pending. In all of the above cited sections no other peace officer appears but the sheriff, and hence we must conclude that the Legislature intended to confine the service of a warrant on indictment or information to some sheriff in Ohio.

This limitation on the officer with authority to serve a warrant on indictment or information cannot be said to be an oversight on the part of the legislature, since in Chapter 17, under the provisions of Section 13438-9, the following language appears:

“Sheriffs, coroners and *all peace officers* are authorized to arrest a convict escaping from the penitentiary, and forthwith convey him to the penitentiary and deliver him to the warden thereof. * * *”
(Emphasis added.)

Likewise, under Section 13438-11, authority is granted to any sheriff or other peace officer to arrest any person who is guilty of violating the terms of his parole or probation.

Since the statutes of Ohio specifically set forth that the provisions regarding process in cases based on information shall be the same as those based on indictment, it is obvious that the legislature intended to confine the processes to the Common Pleas Court and the officers thereof. The sheriff being the chief peace officer of the county, and having the duty to execute all process issued from the Common Pleas Court, and in view of all the foregoing statutes, I have concluded that the sheriff (including of course his duly authorized deputy acting in his behalf) is the only person who can serve a warrant issued by the clerk of the Common Pleas Court for the arrest of a person charged through the medium of information, irrespective of the type of the offense alleged to have been committed by the accused.

Therefore, and specifically answering your question, it is my opinion that a member of the state highway patrol is not authorized to serve a warrant issued by the clerk of courts for the arrest of a person standing accused before the Common Pleas Court on an information filed by the prosecuting attorney, even though the offense charged is one classified under Section 1181-3 of the General Code, and such clerk is without authority to issue to a member of the State Highway Patrol such a warrant.

Respectfully,

HUGH S. JENKINS

Attorney General