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A CLERK OF A COUNTY COURT MAY ISSUE A WARRANT FOR THE ARREST OF A PERSON CHARGED WITH EITHER A MISDEMEANOR OR A FELONY—§1907.101 R.C., OPINION No. 1297, OAG, 1960—§§2935.10, R.C., §2935.06, R.C., §2935.09, R.C.

SYLLABUS:

A clerk of a county court appointed pursuant to Section 1907.101, Revised Code, may, under the provisions of Section 2935.10, Revised Code, sign and issue a warrant for the arrest of a person charged with either a misdemeanor or a felony.

Columbus, Ohio, February 28, 1962

Hon. Dennis J. Callahan, Prosecuting Attorney
Lawrence County, Ironton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Re: County Court, Lawrence County, Ohio.

“A rather serious problem has arisen in our County Court concerning warrants issued by that Court. As of this date, the County Court is not a court of record, and the Clerk of the County Court is appointed by the Judge of said court. A habeas corpus has been filed concerning the legality of a warrant signed by the clerk of the county court, and this situation would probably carry over into quite a number of other instances where warrants have been signed by the clerk. The question is whether or not a warrant signed by an appointed clerk of the county court is legal, or whether the warrant must be signed by the judge of the county court. There are several statutes that mention courts of record, among them being O.R.C., Sections 2935.10, 2935.09, and 1907.10.1. Also, Attorney General Opinion No. 1297, rendered in 1960, which refers to warrants issued by the clerk of the court.

“As this situation is quite important and urgent in our county at this time, I would appreciate your sending me opinion at your earliest convenience.”

Section 1907.101, Revised Code, dealing with the clerk of a county court, reads, in part, as follows:

“(A) The clerk of courts shall be the clerk of the county court except that the board of county commissioners, with the concurrence of the county court judge or judges, may appoint a clerk for each county court judge. Such appointed clerk shall serve at the pleasure of the board and shall receive compensation as set by the board, payable in semimonthly installments from the treasury of the county.

“Such appointed clerk, before entering upon the duties of his office, shall give bond of not less than five thousand dollars to be determined by the board of county commissioners conditioned upon the faithful performance of his duties as clerk.

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Thus, a county court may have an appointed clerk, or the clerk of courts may serve as clerk. As to the situation when the clerk of courts acts as clerk of the county court, I held in my Opinion No. 1297, Opinions of the Attorney General for 1960, issued on April 22, 1960:

“A clerk of courts who also acts as clerk of a county court under Section 1907.101, Revised Code, may, under the provisions of Section 2935.10, Revised Code, sign and issue a warrant for the arrest of a person charged with either a misdemeanor or a felony.”

In said Opinion No. 1297 I did not reach any conclusion as to the authority of an appointed clerk of a county court to issue warrants, since because a clerk of courts, as such, has that authority, such was not necessary for the purposes of that opinion. The present question does deal, however, with the authority of an appointed clerk.

Among the powers of a clerk of a county court under division (B) of Section 1907.101, *supra*, are those authorizing him to:

“* * * administer oaths, take affidavits, and issue executions upon any judgment rendered in the county court, including a judgment for unpaid costs, *power to issue and sign all writs, process, subpoenas, and papers issuing out of the court, and to attach the seal of the court thereto, and powers to approve all bonds, sureties, recognizances, and undertakings fixed by any judge of the court or by law.* * **” (Emphasis added)

The power to issue process includes the power to issue warrants. On this point, it is stated in 72 Corpus Juris Secundum, page 988:

“A warrant is the process by which a party is brought into court. The term may be applied to processes in civil as well as criminal, proceedings. A warrant, such as a warrant for arrest or a search warrant, constitutes process * * *.”

Accordingly, the clerk of a county court, whether appointed or serving because he is clerk of courts, is specifically authorized to issue warrants.

Your question has apparently arisen because of certain sections of law which might be construed to imply that the issuance of warrants by clerks of the various courts is limited to issuance by clerks of courts of record. County courts are not courts of record until January 1, 1963 (See Section 1907.012, Revised Code).

Section 2935.10, Revised Code, reads in part:

“Upon the filing of an affidavit or complaint as provided by section 2935.09 of the Revised Code, if it charges the commission of a felony, such judge, clerk or magistrate, unless he has reason to believe that it was not filed in good faith, or the claim is not meritorious, shall forthwith issue a warrant for the arrest of the person charged in the affidavit, and directed to a peace officer, otherwise he shall forthwith refer the matter to the prosecuting attorney or other attorney charged by law with prosecution for investigation prior to the issuance of warrant.

“If the offense charged is a misdemeanor or violation of a municipal ordinance, such judge, clerk, or magistrate may:

“(A) Issue a warrant for the arrest of such person, directed to any officer named in section 2935.03 of the Revised Code but in cases of ordinance violation only to a police officer or marshal or deputy marshal of the municipal corporation:

* * *

* * *

* * *.”

It will be noted that the section refers to “such * * * clerk” without any indication of what clerk is intended. Another section of the same chapter, however, Section 2935.06, Revised Code, does make reference to a clerk of a court of record, reading:

“A private person who has made an arrest pursuant to section 2935.04 of the Revised Code or detention pursuant to section 2935.041 of the Revised Code shall forthwith take the person arrested before the most convenient judge or clerk of a court of record or before a magistrate, or deliver such person to an officer authorized to execute criminal warrants who shall,

without unnecessary delay, take such person before the court or magistrate having jurisdiction of the offense. The officer may, but if he does not, the private person shall file or cause to be filed in such court or before such magistrate an affidavit stating the offense for which the person was arrested."

Also, Section 2935.09, Revised Code, provides:

"In all cases not provided by sections 2935.02 to 2935.08, inclusive, of the Revised Code, in order to cause the arrest or prosecution of a person charged with committing an offense in this state, a peace officer, or a private citizen having knowledge of the facts, shall file with the judge or clerk of a court of record, or with a magistrate, an affidavit charging the offense committed, or shall file such affidavit with the prosecuting attorney or attorney charged by law with the prosecution of offenses in court or before such magistrate, for the purpose of having a complaint filed by such prosecuting or other authorized attorney."

While said Sections 2935.06 and 2935.09 do refer to a clerk of a court of record, in view of the specific authority of Section 1907.101, *supra*, I do not believe that this fact should preclude the appointed clerk of a county court from issuing warrants. In fact, Section 2935.06, *supra*, states that the person arrested by a private person may be taken before the most convenient judge or clerk of a court of record or before a magistrate, *or deliver such person to an officer authorized to execute criminal warrants*, thus implying that officers other than those specifically named therein may be authorized to issue warrants.

Further, Section 1907.101, *supra*, is a specific section as to the authority of a clerk of a county court to issue process, and as such constitutes an exception to the general provisions of Sections 2935.06, 2935.09, and 2935.10, *supra*, dealing with warrants, where any conflict exists. In this regard, it is stated in *Fisher Bros. Co., v. Bowers*, 166 Ohio St., 191, at page 196:

"We have held so many times that it has become axiomatic that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subject matter as well as the specific subject matter. *State, ex rel. Steller et al., Trustees, v. Zangerle, Aud.*, 100 Ohio St., 414, 126 N.E., 413; *State, ex rel. Elliott Co., v. Conar, Supt.*, 123 Ohio St., 310, 175 N.E., 200; *Acme Engineering Co. v. Jones, Admr.*, 150 Ohio St., 423, 83 N.E. (2d), 202; *Johnson v. United Enterprises, Inc., ante*, 149."

Accordingly, it is my opinion and you are advised that a clerk of a county court appointed pursuant to Section 1907.101, Revised Code, may, under the provisions of Section 2935.10, Revised Code, sign and issue a warrant for the arrest of a person charged with either a misdemeanor or a felony.

Respectfully,

MARK McELROY

Attorney General