

4647.

WARRANT—PORTSMOUTH MUNICIPAL COURT MAY REQUIRE SHERIFF OF SCIOTO COUNTY TO SERVE WARRANT WHEN—SHERIFF'S FEES IN SUCH CASE.

SYLLABUS:

The Municipal Court of Portsmouth may require the Sheriff of Scioto County to serve warrants where the offense charged is a violation of the laws of the state.

The Sheriff serving such processes is entitled to the statutory fees for such services which are to be paid into the County Treasury.

COLUMBUS, OHIO, September 11, 1935.

HON. EMORY F. SMITH, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—This will acknowledge receipt of a request from you for my opinion relative to whether or not the Municipal Court of Portsmouth may require the Sheriff of Scioto County to serve warrants. Your letter reads in part as follows:

“* * * In other words, does the enactment of these two sections, that is 13432-1 and 13432-9 apply to the Municipal Court of the City of Portsmouth and give to this court the authority to issue warrants to the local sheriff and require him to serve the same?”

Sections 1579-459 et seq., General Code provide for the Municipal Court of Portsmouth. It is necessary that the legislation establishing each Municipal Court be examined in order to determine what, if any, express provisions have been made regarding the serving of processes. Section 1579-468, General Code, reads as follows:

“In all criminal cases and proceedings the practice and procedure and mode of bringing and conducting prosecutions for offenses, and the powers of the court in relation thereto, shall be the same as those which are now or may be hereafter possessed by police courts or mayors in municipalities or justices of the peace, unless otherwise herein provided.”

Section 1579-486, General Code, reads as follows:

“The bailiff shall perform for the municipal court services similar to those usually performed by sheriffs for the court of com-

mon pleas and by constables for courts of justices of the peace.”

This office in an opinion to be found in *Opinions of the Attorney General for 1925*, page 550 held as disclosed by the syllabus:

“The municipal court of Portsmouth may not legally issue warrants directed to the sheriff of the county or the constable of a township.

Such warrants should be issued to the bailiff or a deputy bailiff provided for said court.”

This opinion was based chiefly on Sections 1579-468 and 1579-486, *supra*, of the Portsmouth Municipal Court Act. After the rendition of this opinion the new Criminal Code was enacted in 1929. (113 O. L. 123). Sections 13432-1 and 13432-9, General Code, were enacted at that time. These sections read as follows:

“Sec. 13432-1.

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 an ordinance of a city or village, until a warrant can be obtained.

A constable within the limits of the township in which said constable has been appointed or elected, shall arrest and detain a person found by him in the commission of a misdemeanor, either in violation of a law of this state or an ordinance of a village, until a warrant can be obtained.”

“Sec. 13432-9.

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 any officer named in Section 1 of this chapter, but if the offense charged is a violation of the ordinance or regulation of a municipal corporation, such process shall be directed to and extended by the officers of such corporation.”

A similar question to the one presented by you relative to the Marion Municipal Court Act was passed upon by this office in an opinion to be found in *Opinions of the Attorney General for 1933*, Vol. II, page 1416. The first branch of the syllabus of that opinion reads as follows:

"1. The Municipal Court of Marion may issue warrants directed to the sheriff of Marion County where the offense charged is a violation of the laws of the state. The sheriff serving such processes is entitled to the statutory fees for such services which are to be paid into the county treasury. Opinion No. 859, rendered May 22, 1933, discussed and distinguished."

After quoting two opinions of 1925 relative to the Newark and Portsmouth Municipal Court Acts, the following appears at page 1419:

"These two opinions were based upon the provisions of the Newark and Portsmouth Municipal Court Acts. These two acts contain provisions similar to section 1579-775, supra, of the Marion Court Act.

Sections 13432-1 and 13432-9 do not purport to repeal section 1579-775, supra. Repeals by implication are not favored by the law, and wherever possible, a court will try to harmonize the statutes. As stated in the case of *State, ex rel. vs. Building Commission*, 123 O. S. 70, at page 74, 'the rule is familiar and elementary that repeals by implication are not favored and that the legislature in passing a statute did not intend to interfere with or abrogate any former law relating to the same matter unless the repugnancy between the two are irreconcilable.'

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It is possible to harmonize section 13432-9, supra, with the Marion Municipal Court Act by holding that this section merely extends to the sheriff's authority to serve warrants in state cases.
* * * "

This opinion went into the question of the apparent conflict between the Marion Municipal Court Act and Sections 13432-1 and 13432-9, General Code. The conclusion was there reached that it was possible to harmonize these sections. The statutes relative to the Portsmouth Municipal Court Act and the Marion Municipal Court Act are substantially the same so far as they affect the question presented by you. Consequently without extensively reviewing the former 1933 opinion it is sufficient to say that it is dispositive of the question presented by you.

It is therefore my opinion without further extending this discussion that the Municipal Court of Portsmouth may require the Sheriff of Scioto County to serve warrants where the offense charged is a violation of the laws of the

state. The Sheriff serving such processes is entitled to the statutory fees for such services which are to be paid into the County Treasury.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4648.

APPROVAL, BONDS OF THE CITY OF POMEROY, MEIGS COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, September 12, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4649.

APPROVAL, BONDS OF STOW TOWNSHIP RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO, \$17,500.00 (UNLIMITED).

COLUMBUS, OHIO, September 12, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4650.

APPROVAL, CONTRACT FOR VACUUM PUMPS FOR THE OHIO-HARTMAN BUILDING, COLUMBUS, OHIO, \$1,200.00, AETNA CASUALTY AND SURETY COMPANY OF HARTFORD, CONN., SURETY—HUFFMAN-WOLFE COMPANY OF COLUMBUS, OHIO.

COLUMBUS, OHIO, September 12, 1935.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between