

OPINION NO. 69-043

Syllabus:

A municipal police officer can not execute a search warrant outside the boundaries of his municipality because such an act can not be authorized by the legislative body of a municipality, within its power of local self-government, and has not been authorized by state statute.

To: Thomas R. Spellerberg, Seneca County Pros. Atty., Tiffin, Ohio
By: Paul W. Brown, Attorney General, May 7, 1969

I have before me your request for my opinion which asks whether or not a municipal police department officer can execute a search warrant outside the corporation limits of his municipality.

Section 3, Article XVIII, Ohio Constitution, reads:

"Municipalities shall have authority to exercise all powers of local self government and to adopt and enforce within their limits such local, police, sanitary and other similar regulations, as are not in conflict with general laws."

The powers and duties of a municipal police officer are defined in Section 737.11, Revised Code, which reads:

"The police force of a municipal corporation shall preserve the peace, protect persons and property, and obey and enforce all ordinances of the legislative authority thereof, and all criminal laws of the state and the United States. The fire department shall protect the lives and property of the people in case of fire. Both the police and fire departments shall perform such other duties as are provided by ordinance. The police and fire departments in every city shall be maintained under the civil service system."

Although Section 737.11, supra, does not restrict the municipal police officer to the municipality itself in the performance of his duties, interpretation of the phrase "powers of local self-government" in Section 3, Article XVIII, supra, may dictate that such a restriction be imposed.

In State, ex rel. Canada v. Phillips, 168 Ohio St. 191 (1958), the seventh syllabus reads in part:

"Where a municipality establishes and operates a police department, it may do so as an exercise of the powers of local self-

government conferred upon it by sections 3
and 7 of Article XVIII of the Constitution;

"* * * * *"

In Beachwood v. Board of Elections, 167 Ohio St. 369
(1958), the first syllabus stated:

"The power of local self-government granted to municipalities by Article XVIII of the Ohio Constitution relates solely to the government and administration of the internal affairs of the municipality, and, in the absence of a statute conferring a broader power, municipal legislation must be confined to that area." (Emphasis added)

A municipality, which can not legislate outside municipal boundaries by its own authority, similarly, can not empower its police officers to act outside the same municipal boundaries. One of my predecessors, when considering the question of whether a municipal policeman would be eligible for disability benefits for injuries sustained outside the municipality, noted in Opinion No. 50, Opinions of the Attorney General for 1959, at page 27:

"Generally, the responsibility of a police department does not extend beyond the corporate limits of the municipality which supports it."

Several exceptions to this general rule are then mentioned by my predecessor, but I believe authority for any exception would have to be derived from the state itself. It is well established that a municipal police officer is an officer of the state, appointed under authority given by the state. State, ex rel. Speller v. Painesville, 13 O.C.C. (N.S.) 577 (1910), aff'd, 85 Ohio St. 483 (1912); De Romedis v. Yorkville, 21 O.N.P. (N.S.) 340 (1918).

Thus, a special state statute could conceivably vest municipal police with such extra-territorial power. Section 2935.02, Revised Code, permits a municipal police officer holding a warrant for the arrest of an accused person to pursue and arrest the accused individual in any county, which is one of the exceptional situations described by my predecessor in Opinion No. 50, supra. I can not find statutory authority, express or implied, for any territorial enlargement of a municipal police officer's power to execute a search warrant outside the municipality.

Therefore, it is my opinion and you are advised that a municipal police officer can not execute a search warrant outside the boundaries of his municipality because such an act can not be authorized by the legislative body of a municipality, within its power of local self-government, and has not been authorized by state statute.