

1929.

MUNICIPAL COURT OF NEWARK—NO AUTHORITY TO ISSUE WARRANTS DIRECTED TO SHERIFF OF LICKING COUNTY.

*SYLLABUS:*

*The Municipal Court of Newark (Sections 1579-367 to 1579-415, both inclusive, of the General Code) is without authority to issue warrants directed to the sheriff of Licking County, Ohio. Such warrants should be directed to the bailiff or to any police officer of the City of Newark, Ohio.*

COLUMBUS, OHIO, April 2, 1928.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge your letter of recent date, which reads:

“On March 4, 1925, the Attorney General addressed a letter to the Bureau, which reads:

“This will acknowledge receipt of your letter of March 3rd, enclosing a letter from H. T. Manner, Examiner, asking if the clerk of the Municipal Court of Newark, Ohio, may issue warrants to the sheriff of Licking County.

I have examined the Municipal Court act and find nothing in the act governing this question and hence must turn to Section 13500, General Code, for authority of the clerk in such cases.

This section says that warrants issued by an officer of a municipal corporation shall be issued to an officer of such corporation.

Our opinion, therefore, holding that a mayor cannot issue a warrant to a sheriff, applies in this case and the clerk of the Municipal Court of Newark cannot issue warrants to the sheriff of Licking County.’

QUESTION: May warrants be issued to the sheriff of Licking County by the Municipal Court of Newark, Ohio?”

Section 1579-367, General Code, reads as follows:

“That there be and hereby is created a court of record for the city of Newark, and the township of Newark, in the county of Licking, state of Ohio, to be styled ‘The Municipal Court of Newark, Ohio,’ the jurisdiction thereof to be as herein and hereinafter fixed and determined.”

By the terms of Section 1579-373, General Code:

“The judge of the Municipal Court shall have jurisdiction and the authority to perform any and all acts conferred upon justices of the peace under the general laws of the state of Ohio, and such jurisdiction and authority to perform acts as by law may be hereafter created for such justice of the peace courts or justices of the peace.”

Section 1579-388, General Code, provides, in part, as follows:

“Said Municipal Court herein established shall have the same jurisdiction in criminal matters and prosecutions for misdemeanors and felonies, for violations of ordinances and the criminal laws of the state, as police courts, mayors of cities and justices of the peace, \* \* \* ”

By the terms of Section 1579-398, General Code :

“In all criminal cases and proceedings the practice and procedure and the mode of bringing and conducting the procedure of defenses and the powers of the courts in relation thereto, shall be the same as those which are now, or may hereafter be possessed by the police courts, mayors' courts and justices of the peace courts, unless otherwise provided herein. And the Municipal Court shall exercise such jurisdiction as is now, or may hereafter be granted to such courts, in criminal matters.”

In the chapter of the penal code entitled “Arrest, Examination and Bail,” Section 13500, General Code, which provides what a warrant shall contain and to whom it shall be directed, when issued by a justice of the peace, police judge, or the mayor of a city or village (Section 13494, General Code), in so far as pertinent, reads :

“The warrant shall be directed to the sheriff or to any constable of the county, or, when it is issued by an officer of a municipal corporation, to the marshal or other police officer thereof. \* \* \* ”

You will note that Section 13500, supra, is silent with regard to whom warrants shall be directed when issued by Municipal Courts.

Section 1579-381, General Code, provides, in part, as follows :

“One bailiff shall be appointed by the judge of the Municipal Court. *He shall perform for the Municipal Court, services similar to those usually performed by the bailiff, and sheriff for the Court of Common Pleas, and by the constable of the courts of justice of the peace.* \* \* \* ”

Section 1579-383, General Code, reads :

“Every police officer of the city of Newark, Ohio, shall be ex-officio a deputy bailiff of the Municipal Court, and the chief of police shall assign one or more such police officers from time to time to perform such duties in respect to cases within the jurisdiction of said court as may be required of them by said court or the clerk. Such deputy bailiff shall have the same power and authority as is conferred upon the bailiff under the terms of this act.”

The Legislature has, with particularity, prescribed that process issued by the several courts shall be directed to different officers. Process issued by the Probate Court is, by the terms of Section 1596, General Code, to be directed to sheriffs, coroners and constables. Section 1660, General Code, prescribes that process issued by the Juvenile Court shall be directed to a probation officer of such court or to a county sheriff. Generally speaking; process issued by the Court of Common Pleas is directed to a county sheriff. Section 13500, supra, provides that a warrant shall be directed to the sheriff or to any constable of the county except that, when it is issued by an officer of a municipal corporation, it must be directed to the marshal or other police

officer of such corporation. In criminal proceedings before a mayor of a city, Section 4534, General Code, provides that process shall be directed to the chief of police or to a police officer of the municipality designated by him, while in like proceedings before the mayor of a village, Section 4542, General Code, directs that the marshal shall "execute and return all writs and process to him directed by the mayor."

By virtue of the provisions of Section 1579-381, *supra*, it is my opinion that the act creating the Municipal Court of Newark specifically makes it the duty of such Municipal Court to direct its warrants to the bailiff or to a police officer of the City of Newark. Such court is without authority to issue warrants directed to the sheriff of Licking County, Ohio.

In this connection your attention is directed to an opinion of this office which appears in Opinions, Attorney General for 1925, at page 550, the syllabus of which reads:

"The Municipal Court of Portsmouth may not legally issue warrants directed to the sheriff of the county or constable of a township. Such warrants should be issued to the bailiff or a deputy bailiff provided for said court."

Although to determine to what officers process issued by the several Municipal Courts shall be directed requires an examination of each act creating such court, the pertinent language of the acts creating the Municipal Court of Portsmouth and the Municipal Court of Newark, in so far as the question you present, is practically identical in form and substance. In other words, as regards the question you present, a like conclusion must be reached in so far as these two Municipal Courts are concerned.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1930.

DOGS—CLAIMS FOR DAMAGES—AUTHORITY OF COUNTY COMMISSIONERS TO ALLOW CLAIMS, DISCUSSED.

*SYLLABUS:*

1. *By the terms of Section 5840, General Code, in order to entitle any owner of horses, sheep, cattle, swine, mules and goats, which have been injured or killed by a dog not belonging to such owner, or harbored on his premises, to enter a claim for damages, such owner must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.*

2. *A board of county commissioners is without authority to allow a claim for damages, presented under the provisions of Section 5840, General Code, unless the claimant notifies a county commissioner in person or by registered mail within forty-eight hours after the loss or injury has been discovered.*

COLUMBUS, OHIO, April 2, 1928.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge your letter dated March 30, 1928, which reads: