

1297

CLERK OF COURTS ALSO ACTING AS CLERK OF A COUNTY COURT MAY SIGN AND ISSUE A WARRANT FOR THE ARREST OF A PERSON—§§1907.101, 2935.10, R.C.

SYLLABUS:

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.

Columbus, Ohio, April 22, 1960

Hon. Ralph A. Hill, Prosecuting Attorney  
Clermont County, Batavia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Clermont County has a County Court under the laws of the State of Ohio, divided into a Northern District and a Southern District. There is no municipal court within the county. The Court is not a court of record and will not be until January 1, 1963. The Board of Commissioners, pursuant to Section 1907.101, as effective November 6, 1959, has delegated, through additional appropriations, the duties of Clerk of the County Court to the elected Clerk of Courts of Clermont County, which position he is still filling.

“Under date of October 30, 1959, the Clerk of Courts of this county requested an opinion concerning his duties and authority to issue warrants in the County Court, copy of which request is attached hereto and marked ‘Exhibit A’. He had requested at that time that I secure your opinion, but accepted the opinion of this office dated November 6, 1959, copy of which is enclosed and marked ‘Exhibit B’.

“The County Court Judges would like to be relieved of the twenty-four hour call to sign warrants, and forwarded to me a request for your opinion, dated March 16, 1960, copy of which is enclosed and marked ‘Exhibit C’.

“I believe that the above, together with the enclosed documents, constitutes sufficient background and information of what has transpired.

“Your opinion is respectfully requested on the following question:

“Does the Clerk of Courts, duly elected and qualified as such, either personally, or through his duly qualified deputies as Clerk of the County Court, which is not a court of record, have either a duty or the authority to sign and issue a warrant for the arrest of a person charged with:

- (1) a misdemeanor
- (2) a felony

upon an affidavit duly filed in said court or is this duty an authority vested only in the Judge of a County Court not a court of record under the present laws of the State of Ohio?”

Since in this instance the board of county commissioners has not appointed clerks for the county court judges, the clerk of courts is the official clerk of the county court. In this regard, Section 1907.101, Revised Code, reads in part:

“(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.

“\* \* \*

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)

It would appear that the power to issue process would include 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 \* \* \*.”

Although in view of the foregoing, it would appear that the clerk of a county court is authorized to issue warrants for arrests, the provisions of Section 2935.10, Revised Code, pertaining to issuance of warrants, are here pertinent. This section reads as follows:

“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 such corporation);*

“(B) Issue summons, to be served by an (a) peace officer, bailiff, or court constable, commanding the person against whom the affidavit or complaint was filed to appear forthwith, or at a fixed time in the future, before such court or magistrate. Such summons shall be served in the same manner as in civil cases;

“(C) If the affidavit is filed by, or complaint is filed pursuant to affidavit executed by, a peace officer who has at his discretion, at the time of commission of the alleged offense, notified the person to appear before the court or magistrate at a specific time set by such officer, no process need be issued unless the defendant fails to appear at the scheduled time.

“Any person charged with a violation of a misdemeanor or municipal ordinance may give bail as provided in sections 2937.22 to 2937.46, inclusive, of the Revised Code, for his appearance, regardless of whether a warrant, summons, or notice to appear has been issued.

“Any warrant, summons, or any notice issued by the peace office shall state the substance of the charge against the person arrested or directed to appear.” (Emphasis added)

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 (2935.04.1) 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 offenses for which the person was arrested.” (Emphasis added)

Both Section 2935.06 and 2935.10, Revised Code, were amended by Amended Substitute Senate Bill No. 73 of the 103rd General Assembly, effective January 1, 1960. Reading these sections of the act together, it appears that the references to “such \* \* \* clerk” as contained in Section 2935.10, *supra*, pertain to “a clerk of a court of record” as specified in Section 2935.06, *supra*.

Considering its functions, a county court might well be termed a court of record. Section 1907.012, Revised Code, however, states:

“Effective January 1, 1963, county courts shall be considered courts of record for all purposes of law.”

This provision was enacted by Amended House Bill No. 571 of the 103rd General Assembly, effective November 6, 1959, and demonstrates a legislative intent that county courts should not be considered courts of record until January 1, 1963.

While there is thus a seeming conflict between Section 2935.06, *supra*, and Section 1907.101, *supra*, so far as the power of a clerk of the county court is concerned, such sections might well be considered to be in *pari materia* and, therefore, to be read together to ascertain the intent of the legislature in this regard. As stated in 37 Ohio Jurisprudence, Section 331, page 594:

“The general assembly, in enacting a statute, is assumed, or presumed, to have legislated with full knowledge and in the light of all statutory provisions concerning the subject-matter of the act, because the legislative mind, in the enactment of a statute, is directed to what has been enacted and exists as a part of the statutory law of the state on the same subject or subjects related to it. It is therefore a fundamental rule of statutory construction that sections and acts in *pari materia* should be construed together as if they were a single statute.”

And, in the same volume, Section 332, page 599:

“Statutes or sections which expressly refer to each other or which relate to the same person or thing or to the same class of persons or things or to the same subject or object may be regarded as in *pari materia*.”

Reading the two sections together, it might be said that the intent was to, in general, limit the issuance of warrants by clerks to clerks of courts of record, but that the clerk of a county court, being specifically authorized to issue process, is exempted from the general rule. As the instant question is concerned with a clerk of courts who, as such, is a clerk of a court of record, however, I do not deem it necessary to further consider this aspect in answering your request.

Actually, Section 1907.101, *supra*, does not appoint a person serving as clerk of courts to another office, but merely adds to his duties as the clerk of courts. In acting as clerk of the county court he is still the clerk of courts of the county. I might point out in this regard the holding of the first paragraph of the syllabus in Opinion No. 412, Opinions of the Attorney General for 1945, page 520, reading:

“A clerk of the court of common pleas may issue a warrant returnable to a court having jurisdiction thereof, for the arrest of a person charged with a misdemeanor based upon an affidavit filed by a peace officer before any information has been filed by the prosecuting attorney.”

The conclusion of my predecessor was based on the then existing Sections 13432-8, 13432-9 and 13432-1, General Code. The provisions of Sections 13432-8 and 13432-9, General Code, are now found in Section 2935.10, Revised Code; the provisions of Section 13432-1, General Code, are now in Section 2935.03, Revised Code. On reviewing the provisions of Section 2935.10, *supra*, I am of the opinion that the clerk of courts, as a clerk of a court of record, may issue a warrant of arrest under Section 2935.10, *supra*, where the offense charged is a misdemeanor or felony, and the fact that such clerk is also clerk of a county court does not affect his authority in this regard.

As to whether a clerk of a court of record has a duty to issue a warrant under Section 2935.10, *supra*, it will be noted that the section spells out the procedure to be followed by such clerk when an affidavit is filed as provided by Section 2935.09, Revised Code, and that certain alternatives are stated.

Regarding deputy clerks of the clerk of courts, Section 1907.101, Revised Code, provides :

“\* \* \*

“(E) (2) A clerk of courts acting as clerk of the county court may appoint deputy clerks to perform the duties pertaining to the office of clerk of the county court. Each such deputy clerk shall take an oath of office before entering upon his duties and the clerk of courts may require such deputy clerk to give bond of not less than three thousand dollars, conditioned for the faithful performance of his duties.

“\* \* \*

“(F) (2) A clerk of courts acting as clerk of the county court may establish one or more branch offices for his duties as such clerk and may, with the concurrence of the county judge or judges, appoint a special deputy clerk to administer each branch office. Each special deputy clerk shall take an oath of office before entering upon his duties, and when so qualified, may perform any of the duties pertaining to the office of clerk, as the clerk of courts prescribes. The clerk of courts may require any of the special deputy clerks to give bond of not less than three thousand dollars, conditioned for the faithful performance of his duties.

“\* \* \*”

It would appear, therefore, that a deputy clerk is also authorized to issue warrants. In support of this conclusion, the third headnote of *State, ex rel. Focke, v. Price*, 73 Ohio Law Abs., 214, reads:

“3. A deputy clerk of a Municipal Court has authority to issue a warrant for arrest.”

In conclusion, therefore, it is my opinion and you are advised that 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.

Respectfully,

MARK McELROY

Attorney General