

OPINION NO. 86-003

Syllabus:

1. Pursuant to R. Crim. P. 4(D)(1), R. Crim. P. 4.1(F), and R. Crim. P. 9(A), an arrest warrant may be executed by any officer authorized by law; pursuant to R.C. 1901.23 and R.C. 1901.32(E), a municipal court bailiff is authorized to execute an arrest warrant. (1984 Op. Att'y Gen. No. 84-004, clarified and expanded.)
2. Pursuant to R. Crim. P. 4(A)(1), if it appears from a complaint, or the affidavits attached thereto, that there is probable cause to believe that the defendant has committed an offense, an arrest warrant, or a summons in lieu of a warrant, shall be issued "to any law enforcement officer authorized by law to execute or serve it"; pursuant to R.C. 1901.23, R.C. 1901.32(E), and R. Crim. P. 2, a municipal court bailiff is a law enforcement officer authorized to execute an arrest warrant. (1984 Op. Att'y Gen. No. 84-004, clarified and expanded.)
3. Pursuant to R. Crim. P. 4(D)(2), a municipal court bailiff may execute an arrest warrant at any place within this state, provided that venue and subject matter jurisdiction are present. (1979 Op. Att'y Gen. No. 79-008, overruled in part.)

To: John T. Corrigan, Cuyahoga County Prosecuting Attorney, Cleveland, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, January 30, 1986

I have before me correspondence from your office requesting an opinion concerning the authority of municipal court bailiffs to serve arrest warrants issued by municipal court judges. Your request indicates that the question has arisen in light of an apparent conflict between 1984 Op. Att'y Gen. No. 84-004 and 1979 Op. Att'y Gen. No. 79-008.

Op. No. 79-008 states expressly, in the first paragraph of the syllabus: "A municipal court may select...the bailiff of such court...to serve criminal warrants in any area of the county in which such court has jurisdiction." That conclusion was based upon the following language of R.C. 1901.23: "All warrants, executions, subpoenas, writs, and processes in all criminal and quasi-criminal cases may be issued to the bailiff

of the court, a police officer of the appropriate municipal corporation, or to the sheriff of the appropriate county."

Op. No. 84-004 considered generally the question of who could serve process of a municipal court in civil and criminal actions, and also the question whether particular law enforcement officers could execute arrest warrants issued by a municipal court in criminal actions. With respect to the authority of a municipal court bailiff to serve process of a municipal court in criminal actions, Op. No. 84-004 states, in the second portion of paragraph one of the syllabus:

For purposes of service of citations, summons, and other process issued by the judge or clerk of a municipal court in a criminal action, pursuant to R. Crim. P. 4(D)(1), R. Crim. P. 4.1(F), and R. Crim. P. 9(C)(1), the ministerial officer of the municipal court is any officer authorized by law, and is, for purposes of service of a subpoena, any person described in R. Crim. P. 17. (Emphasis added.)

See Op. No. 84-004 n. 1 at 2-8 ("'[m]inisterial officer' is a term sometimes used to identify the person who may serve warrants and process..."). While I believe that the conclusion set forth in this language is correct, I recognize that it does not address the question whether a municipal court bailiff is authorized by law to serve such process.

I note that the second paragraph of the syllabus of Op. No. 84-004 addresses the question whether particular officials may execute arrest warrants of a municipal court, as follows:

For purposes of execution of a bench or arrest warrant issued by a judge or clerk of a municipal court, or by an officer of the court designated by the judge pursuant to R. Crim. P. 4(A)(1), such execution by arrest may be made by (1) a sheriff, sheriff's deputy, municipal police officer, and a state highway patrolman pursuant to R. Crim. P. 4(A)(1), R. Crim. P. 4(D)(1), and R. Crim. P. 9(C)(1); and (2) a game protector of the Division of Wildlife of the Ohio Department of Natural Resources pursuant to R. Crim. P. 4(A)(1), R. Crim. P. 4(D)(1), and R. Crim. P. 9(C)(1), within the limitations of R. Crim. P. 2 and R.C. 1531.13, and when enforcing the provisions of R.C. 2923.12 and R.C. 2923.16.

Op. No. 84-004 did not, however, directly consider whether a municipal court bailiff has authority to execute arrest warrants. The omission of any reference to a municipal court bailiff in the second paragraph of the syllabus of that opinion does not, therefore, reflect the conclusion that a municipal court bailiff may not execute arrest warrants. Rather, it reflects the fact that the questions considered in Op. No. 84-004 did not present that issue. Thus, Op. No. 84-004 should not be characterized as being in conflict with Op. No. 79-008. Rather, an independent analysis must be applied to the question which you have presented in order to determine whether, in light of the principles discussed in Op. No. 84-004, a municipal court bailiff is among those persons who may serve criminal arrest warrants issued by municipal court judges.

In light of the principles discussed in Op. No. 84-004, a determination as to whether a municipal court bailiff is

authorized to serve criminal arrest warrants issued by a municipal court judge begins with an examination of the relevant provisions of the Ohio Rules of Criminal Procedure.¹ Pursuant to R. Crim. P. 1(A), the Ohio Rules of Criminal Procedure "prescribe the procedure to be followed in all courts of this state in the exercise of criminal jurisdiction," with certain exceptions set forth in R. Crim. P. 1(C).

R. Crim. P. 4 contains provisions relating to the issuance and execution of warrants. It states, in part:

RULE 4. Warrant or Summons; Arrest

(A) Issuance.

(1) Upon complaint. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, clerk of court, or officer of the court designated by the judge, to any law enforcement officer authorized by law to execute or serve it.

....
The issuing authority shall issue a summons instead of a warrant upon the request of the prosecuting attorney, or when issuance of a summons appears reasonably calculated to assure the defendant's appearance.

(2) By law enforcement officer with warrant. In misdemeanor cases where a warrant has been issued to a law enforcement officer, he may, unless the issuing authority includes a prohibition against it in the warrant, issue a summons in lieu of executing the warrant by arrest, when issuance of a summons appears reasonably calculated to assure the defendant's appearance....

¹ The Ohio Rules of Criminal Procedure were adopted pursuant to Ohio Const. art. IV, §5(B), which states, in part: "The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right....All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." It has been established that, if a conflict exists between a statute and one of the rules, the rule will control the statute on matters of procedure, and the statute will control the rule on matters of substantive law. See State v. Slatter, 66 Ohio St. 2d 452, 454, 423 N.E.2d 100, 102 (1981). See generally Boyer v. Boyer, 46 Ohio St. 2d 83, 346 N.E.2d 286, cert. denied, 429 U.S. 889 (1976) (relating to the Ohio Rules of Civil Procedure). The Ohio Supreme Court has recognized the service of process as a matter of procedure, which falls within the court's rule-making authority. See Morrison v. Steiner, 32 Ohio St. 2d 86, 290 N.E.2d 841 (1972). It appears, similarly, that the execution of arrest warrants is a procedural matter. See generally City of Fairborn v. Munkus, 28 Ohio St. 2d 207, 277 N.E.2d 227 (1971) (characterizing the execution of warrants for arrest as an administrative service).

....

(C) Warrant and summons: form.

(1) Warrant. The warrant shall contain the name of the defendant or, if that is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint, and shall state the numerical designation of the applicable statute or ordinance. A copy of the complaint shall be attached to the warrant. The warrant shall command that the defendant be arrested and brought before the court issuing it without unnecessary delay.

(2) Summons. The summons shall be in the same form as the warrant, except that it shall not command that the defendant be arrested, but shall order the defendant to appear at a stated time and place and inform him that he may be arrested if he fails to appear at the time and place stated in the summons....

(D) Warrant or summons: execution or service; return.

(1) By whom. Warrants shall be executed and summons served by any officer authorized by law.

(2) Territorial limits. Warrants may be executed or summons may be served at any place within this state.

(3) Manner. Warrants, except as provided in subsection (A)(2), shall be executed by the arrest of the defendant....

Summons may be served upon a defendant by delivering a copy to him personally, or by leaving it at his usual place of residence with some person of suitable age and discretion then residing therein, or, except when the summons is issued in lieu of executing a warrant by arrest, by mailing it to the defendant's last known address by certified mail with a return receipt requested. (Emphasis added.)

R. Crim. P. 4.1 provides for an optional procedure in minor misdemeanor cases, authorizing the issuance of a citation to the defendant. R. Crim. P. 4.1(F) provides that, when a defendant fails to appear as ordered in such a citation, the court may issue "a summons or warrant under Rule 4."

R. Crim. P. 9(A) provides for the issuance of a warrant or summons upon indictment or information, and states that such a warrant shall be delivered to "any officer authorized by law to execute or serve it." Pursuant to R. Crim. P. 9(B), a warrant issued under R. Crim. P. 9 shall be in the form provided in R. Crim. P. 4(C)(1), except that it shall be signed by the court or clerk. R. Crim. P. 9(C)(1) states that such a warrant shall be executed as provided in R. Crim. P. 4(D). See generally R.C. 1901.20 (a municipal court "has jurisdiction to hear felony cases committed within its territory and to discharge, recognize, or commit the accused"); R. Crim. P. 7(A) (all felonies shall be prosecuted by indictment, except when that right is waived in an appropriate case; misdemeanors may be prosecuted by complaint in courts inferior to the court of common pleas).

Pursuant to R. Crim. P. 4(D)(1), R. Crim. P. 4.1(F), and R. Crim. P. 9(A), a warrant may be executed by any officer authorized by law. A municipal court bailiff may, therefore, execute an arrest warrant if he has authority to do so.

As my predecessor noted in Op. No. 79-008, R.C. 1901.23, which governs municipal courts, expressly provides that "[a]ll

warrants...in all criminal and quasi-criminal cases may be issued to the bailiff of the court...." Further, R.C. 1901.32, which sets forth the duties of bailiffs and deputy bailiffs of a municipal court, states, in division (E): "The bailiff and deputy bailiffs shall perform for the court services similar to those performed by the sheriff for the court of common pleas, and shall perform such other duties as are requested by rule of court." See R.C. 311.07(A) (the sheriff "shall attend upon the court of common pleas...during [its] sessions"). The sheriff executes arrest warrants for the court of common pleas. See R.C. 311.07; R.C. 311.08; R.C. 2935.01(B), 2935.03, and 2935.10 (authorizing the issuance of arrest warrants to a sheriff); R. Crim. P. 2 and 4(A)(1) (including a sheriff as a law enforcement officer for purposes of R. Crim. P. 4). It appears that a municipal court bailiff has authority under R.C. 1901.23 and R.C. 1901.32(E) to execute arrest warrants, and is, therefore, an "officer authorized by law" to execute arrest warrants pursuant to R. Crim. P. 4(D)(1) (and, thus, R. Crim. P. 4.1(F)) and R. Crim. P. 9(A). See generally City of Fairborn v. Munkus, 28 Ohio St. 2d 207, 211, 277 N.E.2d 227, 229 (1971) (under R.C. 1901.32(D) and (E), municipal police officers have the authority to act as ex officio bailiffs to carry out the orders of the municipal court and, "[a]s such, they have the authority to perform administrative services as requested by rule of court, including the execution of warrants for arrest").

Although I have concluded that a municipal court bailiff is an "officer authorized by law" to execute an arrest warrant pursuant to R. Crim. P. 4(D), I note that Op. No. 84-004 states at 2-10 that an exception "to the authority conferred upon 'any officer authorized by law' by R. Crim. P. 4(D)(1) to execute warrants" may be found in R. Crim. P. 4. R. Crim. P. 4(A)(1), quoted in relevant part above, provides that, if it appears from a complaint, or the affidavits attached thereto, that there is probable cause to believe that the defendant has committed an offense, an arrest warrant, or summons in lieu of a warrant, shall be issued "to any law enforcement officer authorized by law to execute or serve it." See R.C. 2935.09, 2935.10. R. Crim. P. 2 contains the following definition for purposes of the Criminal Rules:

"Law enforcement officer" means a sheriff, deputy sheriff, constable, municipal police officer, marshal, deputy marshal, or state highway patrolman, and also means any officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, the authority to arrest violators is conferred, when such officer, agent, or employee is acting within the limits of such statutory authority. The definition of "law enforcement officer" contained in this rule shall not be construed to limit, modify, or expand any statutory definition, to the extent such statutory definition applies to matters not covered by the Rules of Criminal Procedure. (Emphasis added.)

A municipal court bailiff is clearly an officer, agent, or employee of the state or one of its agencies, instrumentalities, or political subdivisions. See R.C. 124.11(A)(10) (bailiffs of courts of records, including under R.C. 1901.02 municipal courts, are in the unclassified service of the state or the several counties, cities, civil service townships, city health districts, general health districts, or

city school districts). See generally State ex rel. Cherrington v. Hutsinpiller, 112 Ohio St. 468, 471, 147 N.E. 647, 648 (1925) ("[a] court is an instrumentality and an incident to sovereignty and is the repository of its judicial power. It is the agency of the state by means of which justice is administered, and is that entity in the government to which the public administration of justice is delegated and committed"). Pursuant to R.C. 1901.23 and R.C. 1901.32(E), a municipal court bailiff is authorized to execute arrest warrants by arresting the persons named therein. Thus, a municipal court bailiff is a "law enforcement officer" for purposes of the Criminal Rules. A municipal court judge may, therefore, under R. Crim. P. 4(A), issue to the bailiff an arrest warrant upon complaint.

As discussed in footnote one, supra, the Ohio Rules of Criminal Procedure control over conflicting statutes with regard to matters of procedure, including the execution of arrest warrants. It is, therefore, my judgment that, in light of the general authority granted to municipal court bailiffs by R.C. Chapter 1901, the provisions of R. Crim. P. 4, R. Crim. P. 4.1, and R. Crim. P. 9 prevail over any statutory provisions which are at variance with those rules with respect to persons who may execute arrest warrants. See, e.g., R.C. 2935.10(A) (permitting a municipal court judge, see R.C. 2931.01(A); R.C. 2935.01(A), upon the filing of an affidavit or complaint which charges the commission of a felony, to issue an arrest warrant directed to a peace officer; the definition of "peace officer" set forth in R.C. 2935.01(B) does not include a municipal court bailiff); R.C. 2935.10(B) (permitting a municipal court judge, upon the filing of an affidavit or complaint which charges a misdemeanor or violation of a municipal ordinance, to issue an arrest warrant directed to any officer named in R.C. 2935.03, but in cases of ordinance violation only to a police officer or marshal or deputy marshal of the municipal corporation; R.C. 2935.03 does not name a municipal court bailiff). R.C. 2935.25 states that R.C. 2935.02-.24 "do not affect or modify the power of arrest vested by law in other persons or officers than those named in [R.C. 2935.03]," thereby supporting this conclusion. See generally 1962 Op. Att'y Gen. No. 3141, p. 554; 1962 Op. Att'y Gen. No. 2842, p. 148; 1960 Op. Att'y Gen. No. 1297, p. 292; 1952 Op. Att'y Gen. No. 1731, p. 600 at 604 ("[d]espite the general provision as to the execution of warrants [appearing in G.C. 13432-9, which was somewhat analogous to existing R.C. 2935.10], we are required to give effect to the special statutory provision on this subject in the municipal court act [being the language of G.C. 1603, now R.C. 1901.23, which states, in part: 'All warrants...in all criminal and quasi-criminal cases may be issued to the bailiff of the court...']"). I conclude, therefore, that a municipal court bailiff may execute arrest warrants as authorized in R.C. Chapter 1901.

As indicated above, Op. No. 79-008 concluded that a municipal court bailiff has authority to serve criminal warrants only in "any area of the county in which such court has jurisdiction." Op. No. 79-008 (syllabus, paragraph one). That opinion failed, however, to consider R. Crim. P. 4(D)(2), which states: "Warrants may be executed...at any place within this state." See also R.C. 2935.02 ("[i]f an accused person flees from justice, or is not found in the county where a warrant for his arrest was issued, the officer holding the same may pursue and arrest him in any county in this state..."); R. Crim. P. 4(E)(1) (setting forth procedures to be followed upon arrest in the county from which the warrant issued or an

adjoining county, and different procedures to be followed upon arrest in any other county). It is my judgment that, pursuant to R. Crim. P. 4(D)(2), a municipal court bailiff may execute an arrest warrant "at any place within this state," assuming, of course, that venue is proper and that the court has subject matter jurisdiction. See R.C. 1901.18 (setting forth matters in which municipal court has original jurisdiction within its territory); R.C. 1901.19 (setting forth matters in which municipal court and housing division of a municipal court have jurisdiction within the limits of the county or counties in which the court's territory is situated); R.C. 1901.20 (criminal and traffic jurisdiction of municipal courts); R.C. 2901.12 (venue of a criminal case); R.C. 2931.041 (criminal jurisdiction of municipal courts); R. Crim. P. 18(A) (venue of a criminal case). See generally Morrison v. Steiner, 32 Ohio St. 2d 86, 90, 290 N.E.2d 841, 844 (1972) (R. Civ. P. 4.6(A) provides that, in a civil matter, a municipal court may serve process anywhere in the state if venue and jurisdiction over the subject matter are present); Rose v. Associates Discount Corp., 169 Ohio St. 321, 159 N.E.2d 459 (1959); Toledo Edison Co. v. Allen, 13 Ohio App. 3d 108, 468 N.E.2d 373 (Williams County 1983); McElfresh v. Meloy, 76 Ohio L. Abs. 341, 146 N.E.2d 650 (Ravenna Mun. Ct. 1957). I, therefore, overrule Op. No. 79-008 on this point.

In conclusion, it is my opinion, and you are hereby advised, as follows:

1. Pursuant to R. Crim. P. 4(D)(1), R. Crim. P. 4.1(F), and R. Crim. P. 9(A), an arrest warrant may be executed by any officer authorized by law; pursuant to R.C. 1901.23 and R.C. 1901.32(E), a municipal court bailiff is authorized to execute an arrest warrant. (1984 Op. Att'y Gen. No. 84-004, clarified and expanded.)
2. Pursuant to R. Crim. P. 4(A)(1), if it appears from a complaint, or the affidavits attached thereto, that there is probable cause to believe that the defendant has committed an offense, an arrest warrant, or a summons in lieu of a warrant, shall be issued "to any law enforcement officer authorized by law to execute or serve it"; pursuant to R.C. 1901.23, R.C. 1901.32(E), and R. Crim. P. 2, a municipal court bailiff is a law enforcement officer authorized to execute an arrest warrant. (1984 Op. Att'y Gen. No. 84-004, clarified and expanded.)
3. Pursuant to R. Crim. P. 4(D)(2), a municipal court bailiff may execute an arrest warrant at any place within this state, provided that venue and subject matter jurisdiction are present. (1979 Op. Att'y Gen. No. 79-008, overruled in part.)