

3697.

MEMBERS—OF ASSOCIATIONS TO APPREHEND FELONS AND MISDEMEANANTS ORGANIZED UNDER SECTIONS 10200, ET SEQ., GENERAL CODE—MAY NOT ARREST, WITHOUT A WARRANT, A PERSON CHARGED WITH A MISDEMEANOR—MAY NOT CHARGE COSTS FOR ANY SERVICES.

*SYLLABUS:*

1. *A member of an association organized to apprehend felons and misdemeanants under the provisions of Sections 10200 et seq., General Code, may not arrest without a warrant, a person charged with a misdemeanor.*

2. *Such member may not charge in the bill of costs against the defendant for any services rendered by him.*

COLUMBUS, OHIO, October 26, 1931.

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

GENTLEMEN:—This is to acknowledge receipt of your recent communication, which reads:

- “You are respectfully requested to furnish this department your written opinion on the following:

Sections 10200 et seq., General Code, provide for an organization for the apprehension and conviction of criminals. Section 10202 authorizes the presiding officer to appoint deputies, not exceeding one in each township in a county or counties, where the corporation is located. Section 10203 provides that the officers and members of the association, upon the proper certificate of the presiding officer thereof, when so elected or appointed, if a felony, has been committed, may pursue and without warrant arrest any person whom they believe or have reason to believe guilty of the offense. Section 10204 provides that an officer or member of such an association may apply for and obtain a warrant for the arrest of a person accused of a felony or a misdemeanor, which shall be issued to him by any justice of the peace or police magistrate of a city or village under the same conditions as warrants are issued to constables. Under such warrant he shall have the same power to arrest and detain offenders as is vested in constables.

Question 1: May a member appointed under the provisions of sections 10200 et seq. arrest without a warrant a person charged with a misdemeanor?

Question 2: May such member charge in the bill of costs against the defendant for any services rendered by them?”  
Section 10203, General Code, to which you refer, reads:

“The officers and members of the association upon the proper certificate of the presiding officer thereof, when so elected or appointed, if a felony has been committed, may pursue and without warrant arrest any person whom they believe or have reasonable cause to believe guilty of the offense, and arrest and detain the alleged criminal in any county of the state to which he fled, and return him to any officer of the county

wherein the offense was committed, and there detain him until a legal warrant can be obtained for his arrest."

It may be noted from the above section, that the authority as to arrests without a warrant, by officers and members of such association, upon the commission of a felony, is limited to such offense, and does not extend to an arrest for a misdemeanor.

Section 10204, General Code, provides:

"An officer or member of such an association, under such certificate of authority may apply for and obtain a warrant for the arrest of a person accused of felony or misdemeanor, which shall be issued to him by any justice of the peace or police magistrate of a city or village under the same conditions as warrants are issued to constables. Under such warrant he shall have the same power to arrest and detain offenders as is vested in constables."

In the case of *Fouts v. State*, 113 O. S., 450, the court at page 460, declared that Sections 10203 and 10204, General Code, do not confer upon members of such an association the powers of regularly appointed police officers, but they do confer upon them certain police powers not invested in the ordinary citizen.

In that case, the court also said:

"The state grounds its contention upon Sections 10203 and 10204, General Code, given above. It is true that, under this enactment, members of an association formed under Section 10200 et seq. are authorized to arrest without warrant only in cases of felony, not in case of misdemeanors."

I am therefore of the opinion that the answer to your first inquiry should be in the negative.

In answer to your second question, I wish to call to your attention an opinion found in Opinions of the Attorney General for 1930, at page 634, which I believe is dispositive of your inquiry. The first branch of the syllabus reads as follows:

"Officers and members of an association incorporated under the provisions of Sections 10200 et seq., of the General Code, are not entitled to the payment of fees for making arrests and serving warrants." In view of the foregoing, I am of the opinion:

First, a member of an association organized to apprehend felons and misdemeanants under the provisions of Sections 10200 et seq., General Code, may not arrest without a warrant a person charged with a misdemeanor.

Second, such member may not charge in the bill of costs against the defendant for any services rendered by him.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*