

In addition to the above bond you should be furnished with a certified copy of a resolution of the Board of Directors of The Fairchild Milling Company authorizing and directing the proper officer to sign the bond for and on behalf of said company. If the surety on the bond is a surety company you should be furnished with a certificate of the Superintendent of Insurance to the effect that such company is authorized to transact business in this state and also with a certified copy of the power of attorney of the agent signing the bond in behalf of the surety company together with a financial statement of said company. If the sureties on the bond are personal sureties you should be furnished with affidavits by the sureties to the effect that they have property subject to execution over and above all liabilities in a sum equal to the amount of the bond or a certificate of the County Auditor to that effect.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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782.

APPROVAL, NOTE OF WEYMOUTH RURAL SCHOOL DISTRICT, MEDINA COUNTY—\$528.00.

COLUMBUS, OHIO, July 26, 1927.

*Retirement Board, State Teachers' Retirement System, Columbus, Ohio.*

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783.

PROBATE COURTS—MAY NOT DIRECT SERVICE TO CHIEF OF POLICE OR A MEMBER OF CITY POLICE DEPARTMENT OR TO A VILLAGE MARSHAL OR HIS DEPUTY.

**SYLLABUS:**

*By virtue of the provisions of Section 1596, General Code, process issued by a probate court must be directed to and served by sheriffs, coroners and constables, except that, by the terms of Section 6212-26, General Code, in prosecutions involving violations of the laws prohibiting traffic in intoxicating liquors process issued by the probate court may also be directed to and served by the commissioner of prohibition, the deputy commissioner and regularly appointed inspectors of the prohibition department. In no case is the probate court authorized to direct service to the chief of police or a member of the police department of a city or to a village marshal or his deputy.*

COLUMBUS, OHIO, July 27, 1927.

HON. HERMAN F. KRICKENBERGER, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—Your letter of recent date requesting my opinion duly received. Your letter reads as follows:

“Since the decision of Judge Taft in the case of *Tumey vs. State of Ohio*, I presume your department has been flooded with requests for opinions rela-

tive to the procedure to follow in liquor cases. Nevertheless, there is one question upon which I desire your opinion, which question is as follows:

Can a probate judge legally issue a warrant to a police officer of a municipal corporation?"

Section 13424 of the General Code, relating generally to the jurisdiction of the probate court, reads as follows:

"The probate court shall have concurrent jurisdiction with the court of common pleas in all misdemeanors and all proceedings to prevent crime."

Inasmuch as your inquiry, however, is concerned with procedure "in liquor cases," your attention is directed to Sections 6212-17f, 6212-18 and 6212-39, General Code, providing *inter alia* as follows:

"Sec. 6212-17f. Any \* \* \* probate \* \* \* judge, shall have final jurisdiction within their respective counties of all misdemeanors in such counties under this act (G. C. Secs. 6212-15a, 6212-15b and 6212-17a to 6212-17g.)"

"Sec. 6212-18. Any \* \* \* probate \* \* \* judge within the county with whom the affidavit is filed charging a violation of this act (G. C. Secs. 6212-13 to 6212-20), when the offense is alleged to have been committed in the county in which such \* \* \* judge may be sitting, shall have final jurisdiction to try such cases upon such affidavit without a jury, unless imprisonment is a part of the penalty, but error may be prosecuted to the judgment of such \* \* \* judge as herein provided. And in any such cases where imprisonment is not a part of the penalty, the defendant cannot waive examination nor can said \* \* \* judge recognize such defendant to the grand jury; nor shall it be necessary that any information be filed by the prosecuting attorney or any indictment be found by the grand jury. The officers named herein shall have authority to issue search warrants as provided for in Section 6212-16 of the General Code, and the jurisdiction granted herein shall be co-extensive with the county, whether or not within the county there is a municipality having a municipal court."

"Sec. 6212-39. Any \* \* \* probate \* \* \* judge shall have final jurisdiction within their respective counties of all misdemeanors arising in such counties under this act (G. C. Secs. 6212-21 to 6212-39) or under laws relating to intoxicating liquors, or laws providing for the enforcement of such laws."

While by the provisions of Section 6212-24, General Code, it is the duty of all officers to enforce the laws of the state having to do with the prohibition of the liquor traffic, the only section in the chapter entitled "Prohibition," relating to the service of process in criminal cases like the ones under consideration, is section 6212-26, which reads as follows:

"In cases arising under laws prohibiting the liquor traffic, said commissioner, deputy and inspectors shall have the same power to serve criminal and other process and papers as is now or may hereafter be conferred by law upon sheriffs, and shall have the same rights as sheriffs to require aid in executing such process. There shall be taxed in the several courts of the state for such commissioner, his deputy and inspectors, in the bill of costs in

any case in which they perform any such service, the same fees as sheriffs are entitled to receive, which shall be paid promptly into the state treasury."

Since, as will hereinafter be seen, warrants issued by a probate court may be directed to the county sheriff, it may be said without further discussion that the probate court may direct warrants, in cases involving violations of the liquor laws, to the commissioner of prohibition, the deputy commissioner, and regularly appointed inspectors.

There being no provision in any of the various sections which relate to the prohibition of traffic in intoxicating liquors, authorizing a probate court to direct warrants in liquor cases to a police officer of a municipality, reference must be had to the statutes making provision generally for the service of criminal process issued by such courts.

Section 13462, General Code, provides:

"The provisions governing criminal proceedings in the court of common pleas, so far as applicable, shall govern like proceedings in the probate court."

However, the section expressly relating to the service of process issued by a probate court is Section 1596, General Code, which reads as follows:

"When required by the probate judge, sheriffs, coroners and constables shall attend his court, serve and return process directed and delivered to them by such judge, and, if such officer neglects or refuses to serve and return such process issued by a probate judge or to pay over moneys by him collected to such judge or other person when so directed by the probate judge, he shall be subject to fine and amercement as provided in the next section."

In connection with these last quoted sections, it will be helpful to examine the various sections of the Code, containing provisions, as to what officers warrants issued by the different courts having criminal jurisdiction shall be directed.

Section 1660, General Code, providing as to whom writs shall be issued by the juvenile court, reads:

"The summons, warrants, citations, subpoenas and other writs of such judge may issue to a probation officer of any such court or to the sheriff of any county, and the provisions of law relating to the subpoenaing of witnesses in criminal cases shall apply in so far as they are applicable."

Section 4534, General Code, relates to the criminal jurisdiction of the mayor of a city and reads in part:

"\* \* \* The chief of police shall by himself or a police officer of the municipality designated by him attend on the sittings of such court, to execute the orders and process thereof and to preserve order therein and such chief of police or other police officer of the municipality shall execute and return all writs and process to them directed by the mayor, and their jurisdiction in the execution of such writs and process, in criminal cases, and in cases of violations of ordinances of the corporation, shall be co-extensive with the county, and in civil cases shall be co-extensive with the jurisdiction of the mayor therein, and in serving such writs and process and taxing costs thereon, shall be governed by the laws pertaining to constables. \* \* \*"

Like provisions as to the criminal jurisdiction of the mayor of a village are contained in Section 4542, General Code, which provides, *inter alia*:

"The marshal shall execute and return all writs and process to him directed by the mayor, and shall, by himself or deputy, attend on the sittings of such court, to execute the orders and process thereof, and to preserve order therein \* \* \*

In the chapter of the penal code entitled "Arrest, Examination and Bail", Section 13500, 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), 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 and, by a copy of the affidavit inserted therein and annexed and referred to, shall show or recite the substance of the accusation and command such officer forthwith to take the accused and bring him before the magistrate or court issuing such warrant, or other magistrate of the county having cognizance of the case, to be dealt with according to law."*

By virtue of Section 2833, General Code, it is the duty of the sheriff to "attend upon the common pleas court and the court of appeals during their sessions, and, when required, upon the probate court," and by Section 2834, it is provided:

"The sheriff shall execute every summons, order or other process, make return thereof as required by law and exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law."

Sections 13597, et seq., of the General Code contain provisions authorizing the direction of a warrant to the sheriff of the proper county, after the indictment of an accused by a grand jury.

The confines of this opinion prohibit the inclusion of the several sections of the General Code containing provision as to whom process issued by the various municipal courts shall be directed. Suffice it to say, that to determine to what officers process issued by such courts shall be directed, an examination must be made in each case of the act creating the court.

The above resume of the various statutory provisions relating to the direction and service of process issued by the different courts having criminal jurisdiction is herein set forth to demonstrate that 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, *supra*, to be directed to sheriffs, coroners and constables. Section 1660, *supra*, 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. By Section 13500, *supra*, which has to do with the arrest of an accused, upon the filing of an affidavit charging a crime or offense, it is provided 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, *supra*, 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, *supra*, directs that the marshal shall "execute and return all writs and process to him directed by the mayor."

That this discrimination was made advisedly seems apparent when it is remembered that courts of common pleas, probate courts and juvenile courts are county courts with general county wide jurisdiction, while mayors courts, although they have county wide jurisdiction in criminal cases involving violations of state laws, are concerned chiefly with the enforcement of the law within the limits of the municipal corporation, to which limits the jurisdiction of such courts in cases involving violations of municipal ordinances is limited.

Sheriffs are, of course, county officers and paid by the county, while constables are elected by the township, by the terms of Section 3334, General Code, they are "ministerial officers \* \* \* *in their respective counties* in criminal cases, and civil process may be executed by them throughout the county, under the restriction and provisions of the law." Section 3340, General Code, provides that constables shall, "generally, keep the peace in *his proper county*", and by Section 3341, General Code, it is provided in part that:

*"In serving all process, either civil or criminal, and in doing his duties generally, when not otherwise restricted by law, the authority of a constable shall extend throughout the whole county in which he is appointed, and in executing and serving process issued by a justice of the peace, he may exercise the same authority and powers over goods and chattels, and the persons or parties, as is granted by law to a sheriff or coroner, under like process issued from courts of record."* (Italics the writer's.)

Constables are compensated by the fees they receive, collected as costs in cases in which they render services and by an allowance from the county fund in lieu thereof, under Section 3019 of the General Code.

On the other hand, the police departments of cities are maintained for the primary purpose of maintaining law and order in the cities which they serve, while Section 4385, General Code, provides that in villages "the marshal shall be the police officer of the village and executive head under the mayor of the police force," Section 4386, General Code, providing that the marshal "shall suppress all riots, disturbances and breaches of the peace and \* \* \* shall arrest all disorderly persons *in the corporation* and pursue and arrest any person fleeing from justice in any part of the state." The salaries of the members of the police department in cities and the salaries of the marshal and his deputies in villages are paid by the municipal corporation. Obviously it would not be desirable that police officers hired by a municipality to maintain peace and order within the corporate limits of a municipality should be taken from their duties within the corporation and sent by a county court to the far ends of the county to serve process issued by such court.

In a short opinion of Attorney General Lawrence, rendered under date of May 15, 1884, reported in Opinions, Attorney General, Vol. III (1883-1888) p. 318, it was held as follows:

*"A village marshal has authority to serve all writs issued by the mayor, for which purpose his jurisdiction extends throughout the county. He cannot as marshal execute a state warrant issued by a justice of the peace either inside or outside of the corporation, nor can he arrest on view outside of the corporation."*

Lanning, when discussing the criminal jurisdiction of the probate court, at pages 372, et seq., of his work, "Arrest and Prosecution", quotes Section 1596, supra, as prescribing to what officers criminal process issued by the probate court should be directed, and on page 518, where Section 13500, supra, is cited, says as follows:

*"The statute designates the persons to whom a warrant may be directed. It must be to a sheriff, constable, marshal or police officer. Deputy sheriffs, deputy marshals and deputy police officers are authorized to make certain arrest, under Sec. 13492 G. C. but warrants can not be directed to them. But a deputy, duly appointed and qualified, may execute a warrant in the name of his superior.*

\* \* \* \* \*

The following forms point out the proper method of directing warrants to different officials.

Justices should direct their writs according to the extent of their venue:

To any Constable of said Township, Greeting; or  
To any Constable of said County, Greeting; or  
To the Sheriff of said County, Greeting:

Mayors should direct their writs, likewise:

To the Marshal of said Municipality, (or, City, or, Village) of-----  
To the Chief of Police of said Municipality (or, City, or, Village) of"  
(Italics the writer's.)

At page 42 of Warren's Ohio Criminal Law (published in 1870) the author says:

*"Although the warrant must in all cases be directed to any constable of the county, yet it may be delivered to, and executed by the county sheriff, or by any city or incorporated village marshal, deputy marshal, or chief of police, policeman or night watchman of a city. And it is likely the statute may yet be so changed as to allow the warrant to be directed to any of those officers."*

In a foot-note the writer explains that:

*"This view of the matter is given by Hon. Charles H. Scribner, who, as member of the state senate, had very much to do in framing both the criminal procedure and municipal codes."*

As above pointed out, the statute now permits a warrant issued by a magistrate under Section 13500, supra, except when issued by an officer of a municipal corporation, to be directed to the sheriff as well as to any constable, but the statute has never been changed so as to authorize the warrant to be directed to a village marshal or his deputy or to the chief of police or a member of the police force of a city, and it seems not unduly harsh to say that the author's law was as inaccurate as his prophecy.

Your attention is further directed to the case of *Haserodt, Clerk of Court of Common Pleas, et al. vs. State of Ohio, ex rel.* 27 O. C. A. 225, in the opinion of which, Judge Middleton, speaking for the Court of Appeals, used the following language:

*"The only officers who render service in the probate court and before justices of the peace similar to those performed by a chief of police in a police court are sheriffs and constables."*

For the reasons and upon the authorities above set forth, it is my opinion that: By virtue of the provisions of Section 1596, General Code, process issued by a probate court must be directed to and served by sheriffs, coroners and constables,

except that, by the terms of Section 6212-26, General Code, in prosecutions involving violations of the laws prohibiting traffic in intoxicating liquors process issued by the probate court may also be directed to and served by the commissioner of prohibition, the deputy commissioner and regularly appointed inspectors of the prohibition department. In no case is the probate court authorized to direct service to the chief of police or a member of the police department of a city or to a village marshal or his deputy.

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

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784.

SALARIES—HOUSE BILL No. 84, 87TH GENERAL ASSEMBLY, APPLIES ONLY TO EMPLOYES OF COUNTY OFFICES AND NOT TO COUNTY OFFICERS THEMSELVES—SEMI-MONTHLY PAYMENT OF SALARIES.

*SYLLABUS:*

1. *House Bill No. 84 passed by the 87th General Assembly applies only to deputies, assistants, bookkeepers, clerks and other employes appointed or employed by county officers; it provides for semi-monthly payment of the salaries of such appointees and employes.*
2. *Section 2989 of the General Code relating to the payment of salaries of county officers was not amended by said act.*

COLUMBUS, OHIO, July 27, 1927.

HON. RAYMOND B. BENNETT, *Prosecuting Attorney, Medina, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows:

“Kindly advise me as to whether or not the law passed in the last session of the Legislature, with regard to the payment of county employees semi-monthly, has application to the payment of the salaries of officials, as well as those of clerks and stenographers.”

Section 2981 of the General Code as amended in House Bill No. 84 passed by the 87th General Assembly reads as follows:

“Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semi-monthly from the county treasury, upon the warrant of the county auditor. Each of such officers may require such of his employes as he deems proper to give bond to the state in an amount to be fixed by such officer with sureties approved by him, conditioned for the faithful performance of their official duties.