

5066

FINE — WHEN MAGISTRATE RENDERS JUDGMENT — EXECUTION AND COSTS OF PROSECUTION MAY ISSUE TO SHERIFF OF ANY COUNTY WHERE DEFENDANT RESIDES, IS FOUND OR HAS PROPERTY — SHERIFF SHALL EXECUTE WRIT.

SYLLABUS:

When a magistrate renders judgment for a fine an execution for such judgment and costs of prosecution may issue to the sheriff of any county in which the defendant resides or is found or has property, and the sheriff shall execute the writ.

Columbus, Ohio, April 25, 1942.

Hon. Leo E. Carter, Prosecuting Attorney,
Caldwell, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“Kindly furnish me with an opinion whether or not a mayor or justice of the peace, under Sections 10416 and 10417, General Code, or Sections 13454-2, 13454-3, 13454-4, General Code, or any other statute or opinion, can issue an execution to a sheriff for fine and costs.”

Section 2833, General Code, imposes upon the sheriff the duty of executing all warrants, writs and other process to him directed by proper authority.

With respect to an execution for fine and costs, magistrates are specifically authorized to direct said writ to the sheriff. This specific authorization is contained in Sections 13454-2 and 13454-3, General Code, which sections read as follows:

Section 13454-2, General Code:

“When a judge or magistrate renders judgment for a fine, an execution may issue for such judgment and costs of prosecution, to be levied on the property, or, in default thereof, upon the body of the defendant. The officer holding such writ may arrest such defendant in any county and commit him to the

jail of the county in which such writ issued, until such fine and costs are paid or secured to be paid, or he is otherwise legally discharged.”

Section 13454-3, General Code:

“An execution as provided in the next preceding section, may issue to the sheriff of any county in which the defendant resides or is found or has property, and the sheriff shall execute the writ. If the defendant is taken, the sheriff shall commit him to the jail of the county in which the writ issued and deliver a certified copy of the writ to the sheriff of such county, who shall detain the offender until he is discharged as provided in such section.”

In so far as I have been able to ascertain there has never been an occasion in which the courts of Ohio have been called upon to interpret or construe the above quoted sections with respect to the authority conferred therein upon magistrates to issue such executions to sheriffs. Indeed, the clarity of the legislative expression leaves no room for any judicial construction. Various secondary authorities, however, have referred to the foregoing sections and all are in accord with the proposition that a magistrate may issue an execution for fine and costs to a sheriff.

In regard thereto, it is stated in Lanning on Arrest and Prosecutions (page 367):

“It is provided in Section 13718, General Code (now Section 13454-2, General Code), that when a magistrate renders judgment for a fine, an execution may issue therefor to be levied upon the property of, or, in default thereof, upon the body of the defendant. The officer holding such a writ may arrest the defendant, in any county, and commit him to the jail of the county in which such writ was issued, until such fine and costs are paid, or he is otherwise legally discharged. Section 13719, General Code, (now Section 13454-3, General Code) provides that the writ may issue to the sheriff, and that he may execute it.”
(Parenthetical material mine.)

And again in the same work (page 745), it is stated:

“By this section (Section 13719, General Code, now Section 13454-3, General Code), it is shown how uncompromisingly the law exacts its pound of flesh and how oppressively it may pursue the unfortunate man who fails to produce it. If a person is a nonresident, or absent, a magistrate may, *instead* of issuing the execution to a local officer of his court, a constable, marshal or police officer, *or the sheriff of the county,*

issue it direct to the sheriff of another county in which the defendant is found, or has property, and if he levies on the body of the defendant, this foreign sheriff may commit the defendant to the jail of the county in which the writ issued."

(Parenthetical material and emphasis mine.)

Of the same tenor is the following statement taken from Ohio Jurisprudence, Volume 19, at page 19:

"When, in sentencing for a misdemeanor, a judge or magistrate renders judgment for a fine, an execution may issue for such judgment and costs of prosecution to be levied on the property of the defendant. Such execution may issue to the sheriff of any county in which the defendant resides or is found or has property whereupon the sheriff is directed to execute the writ."

Sections 10416 and 10417, General Code, referred to in your inquiry, have reference to the issuance of executions in civil suits and are, therefore, of no application in the present case.

In specific answer to your inquiry, therefore, it is my opinion that when a magistrate renders judgment for a fine an execution for such judgment and costs of prosecution may issue to the sheriff of any county in which the defendant resides or is found or has property, and the sheriff shall execute the writ.

•
Respectfully,

THOMAS J. HERBERT
Attorney General.