

2735.

CONSTABLE — MAY ARREST PERSON FOUND IN COMMISSION OF MISDEMEANOR, ON VIEW AND WITHOUT WARRANT, ONLY IN TOWNSHIP OF CONSTABLES ELECTION OR APPOINTMENT — SECTION 3340 ET SEQ. G. C.

SYLLABUS:

A constable may, only in the township of his election or appointment, arrest on view and without a warrant a person found in the commission of a misdemeanor.

Columbus, Ohio, September 7, 1940.

Hon. Wm. J. Hunter, Prosecuting Attorney,
Upper Sandusky, Ohio.

Dear Sir:

This will acknowledge your recent request for my opinion wherein you present the following facts: A constable elected in Township A, while in Township B observed the commission of a misdemeanor. The constable pursued the offender into Township C where he arrested the offender. You inquire as to the authority of the constable to arrest on view and without a warrant in a township other than the one in which the constable was elected or appointed.

Under Part First, Title XI, Division II, Chapter 5 of the General Code entitled "Constables" the following general sections provide the authority of constables. Under Section 3340, General Code, it is provided:

"Each constable shall apprehend, on view or warrant, and bring to justice, all felons, disturbers and violators of the criminal laws of this state, and suppress all riots, affrays, and unlawful assemblies, which may come to his knowledge, and generally, keep the peace in his proper county."

It is further provided in Section 3341, General Code:

"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."

And in Section 3345, General Code, it is provided:

"Constables shall be ministerial officers of the courts held by justices of the peace, in criminal cases, within their respective counties. They shall apprehend and bring to justice felons and disturbers of the peace, suppress riots, and keep and preserve the peace within their respective counties. They may execute all writs and process in criminal cases throughout the county in which they reside, and in which they were elected or appointed. If a person charged with the commission of a crime or offense, flees from justice, any constable of the county wherein such crime or offense was committed, shall pursue and arrest such fugitive from justice, in any other county of the state, and convey such fugitive before any justice of the peace of the county where such crime or offense was committed."

Under Part Fourth, Title II, Chapter II, the subject of which is "Arrest", it is provided in Section 13432-1, General Code:

"A sheriff, deputy sheriff, marshal, deputy marshal, watchman or police officer, herein designated as 'peace officers' shall arrest and detain a person found violating a law of this state, or an ordinance of a city or village, until a warrant can be obtained.

A constable within the limits of the township in which said constable has been appointed or elected, shall arrest and detain a person found by him in the commission of a misdemeanor, either in violation of a law of this state or an ordinance of a village, until a warrant can be obtained."

It would appear that the provisions of Sections 3340, 3341 and 3345, supra, are in apparent conflict with the terms of the last section above quoted in so far as they appear to grant to constables authority, co-extensive with the territory of the county, to arrest on view for a misdemeanor. Past interpretations of Sections 3340, 3341 and 3345, supra, so construe those sections. See Opinion No. 135, Opinions of the Attorney General for 1929, referred to in your letter of inquiry wherein it was held:

“A duly elected or appointed constable has authority, in the performance of his duties to patrol the highways in any township in his county by virtue of the authority and power granted to him by Sections 3340 and 3345, General Code.”

However, a later opinion of this office found in Opinions of the Attorney General for 1938, Volume I, page 234, came to the conclusion that a constable might not arrest in view for a misdemeanor without the limits of the township in which the constable was elected or appointed. The later opinion properly takes cognizance of the fact that Section 13432-1, supra, dealing with the specific subject of arrest, withdrew from constables by a 1933 amendment of that section the authority to arrest on view for misdemeanors outside the limits of the constable's own township.

A review of the legislative history of Section 13432-1, supra, confirms the propriety of the conclusion of the last opinion. Prior to 1933 Section 13432-1, General Code, read as follows:

“A sheriff, deputy sheriff, *constable*, marshal, deputy marshal, watchman or police officer, herein designated as ‘peace officer’, shall arrest and detain a person found violating a law of this state, or an ordinance of a city or village, until warrant can be obtained.”

(Emphasis mine.)

The above section after amendment in 1933 and as it now exists reads as quoted earlier in this opinion.

It is obvious that by the deletion of the word “constable” in the first paragraph of Section 13432-1 and by the addition of a paragraph stating that a constable, within the township in which he has been appointed or elected, might arrest a person found in the commission of a misdemeanor, the Legislature intended to withdraw from constables the right to arrest on view except “within the limits of the township in which said constable has been appointed or elected”.

It must be considered that Section 13432-1, supra, which relates specifically to the subject of arrest and which is a later enactment than Sections 3340, 3341 and 3345, supra, which relate generally to the authority of constables, is an implied repeal of so much of the general sections granting authority to constables as is inconsistent with Section 13432-1, supra. I reach this conclusion for the reason that in my opinion the sections here considered can not be reconciled in their operation. It follows that the opinion to which you refer in your letter, Opinion No. 135, Opinions of the Attorney General for 1929, in so far as that opinion might be construed to recognize a right in constables to arrest on view and without a warrant in cases of misdemeanor beyond the limits of such constable's township of appointment or election, is of no force since the amendment of Section 13432-1, supra. I find that the conclusion I here reach is in accord with the general rule that a peace officer has no power of arrest in cases of misdemeanor beyond the limits of his district of appointment or election. See 57 C. J. 775, 4 Am. Jur. 35, Section 51.

You are, therefore, advised and it is my opinion that a constable may not, in a township other than the township of his appointment or election, arrest on view and without a warrant a person found in the commission of a misdemeanor.

Respectfully,

THOMAS J. HERBERT,
Attorney General.