

Note from the Attorney General's Office:

1984 Op. Att'y Gen. No. 84-004 was clarified by
1986 Op. Att'y Gen. No. 86-003.

OPINION NO. 84-004**Syllabus:**

1. For purposes of service of summons, writs, and other process issued by the judge or clerk of a municipal court in a civil action, pursuant to R. Civ. P. 4.1, the ministerial officer of the municipal court is (1) the bailiff of the court for service made on defendants who reside or may be found in the county or counties in which the court has territorial jurisdiction; (2) the sheriff of any other county in this state for service upon defendants who reside or may be found in such other county that is not within the court's territorial jurisdiction; and alternatively (3) any person not less than eighteen years of age who is not a party to the action and who is designated by order of the court to make service of process. For purposes of service of subpoenas, in addition to the officers described above, pursuant to R. Civ. P. 45(C) the ministerial officer of the court may also be a coroner, clerk of court, constable, or a deputy of any, or an attorney at law. 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.

2. 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.

To: Mark A. Ochsenbein, Jackson County Prosecuting Attorney, Jackson, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 21, 1984

I have before me your request for an opinion of the Attorney General regarding the following questions:

1. Who is the Ministerial Officer of a Municipal Court that has county-wide jurisdiction and is run under the direction and control of the County Commissioners?

2. Are the following law enforcement officers authorized to serve bench warrants or arrest warrants issued by the Clerk of Courts or the Judge in a County operated Municipal Court:
 1. State Highway Patrol
 2. City Police
 3. County Sheriff's Department
 4. All other law enforcement officers?

It is my understanding that in your first question you seek to know whether anyone other than the municipal court bailiff may serve summons, writs, and other process in civil actions, and further, who may serve process and execute warrants

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in criminal actions.¹ It is also my understanding that the phrase "other law enforcement officers" mentioned in your second question pertains to officers of the Division of Wildlife of the Ohio Department of Natural Resources.

The answer to the question of who may serve process in civil actions commenced in municipal courts is found in Ohio R. Civ. P. 4-4.3.² R. Civ. P. 4.1 states: "All methods of service within this state, except service by publication as provided in Rule 4.4(A) are described herein." R. Civ. P. 4.1(2) further states, in part:

When the plaintiff files a written request with the clerk for personal service, service of process shall be made by that method.

. . . When process issues from the municipal court, delivery shall be to the bailiff of the court for service on all defendants who reside or may be found within the county or counties in which that court has territorial jurisdiction and to the sheriff of any other county in this state for service upon a defendant who resides in or may be found in that other county. In the alternative, process issuing from any of these courts [supreme court, court of appeals, court of common pleas, county court, or municipal court] may be delivered by the clerk to any person not less than eighteen years of age, who is not a party and who has been designated by order of the court to make service of process.

With respect to residence service, R. Civ. P. 4.1(3) states that process may be served "at the usual place of residence of the person to be served. . . . The clerk of the court shall issue the process, and the process server shall return it, in the same manner as prescribed in subsection (2) of this rule."

R. Civ. P. 4.3 sets forth the procedure for service of process outside of this state. R. Civ. P. 4.3(B)(2) states in part that when ordered by a court, a person may be personally served with process "by any person not less than eighteen years of age who is not a party and who has been designated by order of the court."³

¹ "Ministerial officer" is a term sometimes used to identify the person who may serve warrants and process issued by the clerk of courts. For example, R.C. 1907.511 states: "The county sheriff shall be the ministerial officer of the county court in all civil and criminal cases in which the county court has jurisdiction." I assume from your question that you are concerned with the question of who may make personal or residence service, and not service by certified mail or otherwise.

² Compare R.C. 1901.23, which limits the service of process issued by a municipal court "to the bailiff for service in the county or counties in which the court is situated and to the sheriff of any other county against one or more of the remaining defendants." R.C. 1901.23 also provides for service by an appointee of the court where both the bailiff and sheriff are parties to or interested in an action. R. Civ. P. 4 was promulgated by the Ohio Supreme Court pursuant to its rulemaking power granted by Ohio Const. art. IV, §5(B), which states in part: "All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." The court has determined that "service of process is a matter of procedure which now falls within the ambit of this Court's rule-making responsibility." Morrison v. Steiner, 32 Ohio St. 2d 86, 89, 290 N.E.2d 841, 844 (1972). Further, in paragraph 4 of the syllabus of Morrison, the court stated: "Civ. R. 4.1(2) establishes the method by which a municipal court may effect personal service upon a defendant found outside its territory." See Boyer v. Boyer, 46 Ohio St. 2d 83, 346 N.E.2d 236 (1976) (pursuant to Ohio Const. art. IV, §5(B), and R. Civ. P. 1(A), a rule will control a statute on matters of procedure and a statute will control a rule on matters of substantive law).

³ See R. Civ. P. 4.3(A) for reference to the "minimum contacts" which the defendant must have with this state in order to be subject to service of process.

When service is sought to be made upon a person outside of the state and personal service is to be effected in a foreign county, R. Civ. P. 4.5 provides that personal service may be made by any person eighteen years of age or older who is not a party to the action and who is designated as the process server by order of the court or by the foreign court.

With respect to the service of a subpoena, R. Civ. P. 45(C) states: "A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, or a deputy of any, by an attorney at law, or by any other person designated by order of court who is not a party and is not less than eighteen years of age."

Therefore, in answer to that portion of your first question pertaining to the person who may serve process issued by the judge or clerk of a municipal court in a civil action, I conclude that pursuant to R. Civ. P. 4.1, the ministerial officer of a municipal court is: (1) the bailiff of the court for service made on defendants who reside or may be found in the county or counties in which the court has territorial jurisdiction; (2) the sheriff of any other county in this state for service upon defendants who reside or may be found in such other county that is not within the court's territorial jurisdiction; and alternatively (3) any person not less than eighteen years of age who is not a party to the action and who is designated by order of the court as the process server. For the purposes of service of a subpoena, in addition to the officers described above, the ministerial officer of the court may also be a coroner, clerk of court, constable, or a deputy of any, or an attorney at law. R. Civ. P. 45(C).

Turning to the second aspect of your first question, I reiterate my understanding that you desire my opinion as to who may serve criminal, as well as civil, process issued by a municipal court. Since your second question pertains to the question of whether certain law enforcement officers may serve criminal bench⁴ and arrest warrants, I will address together the second aspect of your first question and your second question.

The answers to the questions of who is the ministerial officer of a municipal court for the purpose of serving criminal process and executing warrants, and what types of law enforcement officers may execute bench and arrest warrants, is contained in the Ohio Rules of Criminal Procedure.⁵

⁴ It is my understanding that a bench warrant may issue from the court to compel the appearance of a defendant where, for example, a defendant who has been arrested posts bond and fails to appear in court on the date designated. See 1961 Op. Att'y Gen. No. 2214, p. 231. I agree with the opinion expressed by my predecessor in 1961 Op. No. 2214 that bench warrants are part of the service of process of the prosecution. See also *Oxford v. Berry*, 204 Mich. 197, 211, 170 N.W. 83, 37 (1913) ("A 'bench warrant' is defined as a process issued by the court itself, or 'from the bench,' for the attachment or arrest of a person. . . ."); *Ex parte Lowe*, 94 Tex. Crim. 307, 251 S.W. 505 (1923) (warrant issued from the bench or court is a bench warrant, for arrest of a person or to compel attendance in cases of contempt, or to bring a confined convict to trial in another case).

⁵ R. Crim. P. 1(A) states: "These rules prescribe the procedure to be followed in all courts of this state in the exercise of criminal jurisdiction. . . ." except for limited exceptions set forth in subdivision (C) of the Rule. Ohio Const. art. IV, §5(B) states: "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." The supreme court has determined that service of process is a matter of procedure. *Morrison v. Steiner*, supra note 2. See *State v. Slatter*, 56 Ohio St. 2d 452, 423 N.E.2d 100 (1981) (R. Crim. P. 4.1, creating an optional procedure of issuing citations in minor misdemeanor cases, is procedural in that it does not create and define a right of nonarrest for a minor misdemeanor, but pertains to the method of enforcing this right by providing the option).

R. Crim. P. 17(D), pertaining to the service of subpoenas, states:

A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, marshal, or a deputy of any, by a municipal or township policeman, by an attorney at law or by any person designated by order of the court who is not a party and is not less than eighteen years of age.

R. Crim. P. 4(D)(1) states: "Warrants shall be executed and summons served by any officer authorized by law." Other criminal rules refer to R. Crim. P. 4(D) as authority as to who may execute warrants and serve summons. R. Crim. P. 9(C)(1) states that upon an indictment or information, "Warrants shall be executed or summons served as provided in Rule 4(D). . . ." R. Crim. P. 4.1, which creates an optional procedure in minor misdemeanor cases by means of issuance of a citation, provides that when a defendant fails to appear in response to the citation, a supplemental citation may "be issued and signed by the clerk and served in the same manner as a summons under Rule 4." R. Crim. P. 4.1(F). As a general rule, then, summons may be served and warrants may be executed "by any officer authorized by law." R. Crim. P. 4(D)(1).

Exceptions to the authority conferred upon "any officer authorized by law" by R. Crim. P. 4(D)(1) to execute warrants and serve summons are found in R. Crim. P. 4 and R. Crim. P. 4.1. Pursuant to R. Crim. P. 4(A)(1):

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. (Emphasis added.)

Similarly, the citation procedure created by R. Crim. P. 4.1 for use in minor misdemeanor cases, discussed above, requires that a "law enforcement officer" complete and sign the citation form, and serve a copy of the form upon the defendant. R. Crim. P. 4.1(D).

R. Crim. P. 2 states:

As used in these 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.⁶ (Footnote added.)

Pursuant to R.C. Chapter 2935, pertaining to detection and arrest, "peace officers" are authorized by law to execute arrest warrants and serve criminal process. See R.C. 2935.02 (accused may be arrested in any county); R.C. 2935.08 (issuance of warrant); R.C. 2935.10 (procedure upon filing of affidavit or complaint); and R.C. 2935.25 (power of arrest). R.C. 2935.01(B) defines "peace officer" to include a sheriff, deputy sheriff, member of the organized police

⁶ Such a matter might be, for example, an arrest by telegraph order provided for by R.C. 2935.24.

department of any municipal corporation, and a patrolman of the state highway patrol. Further, R.C. 1901.23 provides, in part, that a municipal court may issue criminal warrants and process to "a police officer of the appropriate municipal corporation, or to the sheriff of the appropriate county."

I conclude, therefore, that since R. Crim. P. 2 defines "law enforcement officer" to include a sheriff, deputy sheriff, municipal police officer, or state highway patrolman, and that since these officers are authorized to execute warrants and serve summons under R.C. Chapters 2925 and/or 1901, such law enforcement officers are "authorized by law" to execute warrants and serve summons and citations for the purposes of R. Crim. P. 4(A)(1) and R. Crim. P. 4.1(D). Further, since the term "law enforcement officer" is a subclass of the term "officer" as these terms are used in the Ohio Rules of Criminal Procedure, I conclude that a sheriff, sheriff's deputy, municipal police officer, or state highway patrolman is an "officer authorized by law" to execute warrants and serve summons and supplemental citations for the purposes of R. Crim. P. 4(D)(1), R. Crim. P. 9(C)(1), and R. Crim. P. 4.1(F).

I reiterate that it is my understanding that in your second question, your use of the words "other law enforcement officers" indicates your desire to know whether game protectors have authority to execute arrest and bench warrants issued by a municipal court. As I state above, pursuant to R. Crim. P. 4(A)(1) and R. Crim. P. 4.1(D), only a "law enforcement officer authorized by law" may execute a warrant or serve a summons issued upon a complaint, and serve a copy of the citation form in minor misdemeanor cases, respectively. R. Crim. P. 2, which I quote above, defines "law enforcement officer" to mean "any officer, agent, or employee of the state or any of its agencies. . . 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."

R.C. 1531.13 states in part:

The law enforcement officers of the division of wildlife [of the Ohio Department of Natural Resources] shall be known as "game protectors." The chief of the division of wildlife, game protectors, and such other employees of the division as the chief designates, and other officers who are given like authority, shall enforce all laws pertaining to the taking, possession, protection, preservation, management, and propagation of wild animals and all orders or rules of the division of wildlife. Such persons shall enforce all laws against hunting without permission of the owner or authorized agent of the land on which such hunting is done. They may arrest on view and without issuance of a warrant therefor. . . .

The chief of the division of wildlife and game protectors are vested with the authority of law enforcement officers for the purpose of enforcing the criminal laws of the state on any property owned, controlled, maintained, or administered by the division of wildlife, and may throughout the state enforce sections 2923.12 and 2923.16 of the Revised Code and may arrest without warrant, any person who, in the presence of the chief or any game protector is engaged in the violation of any such laws. (Emphasis added.)

Pursuant to R.C. 1531.13, then, game protectors are vested with the authority of law enforcement officers, which authority necessarily includes the execution of warrants and service of summons, and they have express powers of arrest.

I conclude, therefore, that since R. Crim. P. 2 defines "law enforcement officer" to include an officer or agent of the state or a state agency who has statutory arrest powers, to the extent that such officer or agent acts within the limits of his statutory authority, and that since game protectors have law enforcement authority and arrest powers pursuant to R.C. 1531.13, game protectors are "law enforcement officer[s] authorized by law" to execute warrants and serve citations and summons for the purposes of R. Crim. P. 4(A)(1) and R. Crim. P.

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4.1(D). As I state above with respect to a sheriff, sheriff's deputy, municipal police officer, and state highway patrolman, since the term "law enforcement officer" is a subclass of the term "officer" as these terms are used in the Ohio Rules of Criminal Procedure, I conclude that a game protector is an "officer authorized by law" to execute warrants and serve summons and supplemental citations for the purposes of R. Crim. P. 4(D)(1), R. Crim. P. 9(C)(1), and R. Crim. P. 4.1(F). Pursuant to the limitations imposed by R. Crim. P. 2 and R.C. 1531.13, however, game protectors may execute warrants or serve summons and citations issued by a municipal court only if the warrants or process pertain to the conservation of wildlife or the enforcement of hunting laws, the warrants or process describe offenses committed on land owned, controlled, maintained or administered by the Division of Wildlife, or the warrants or process describe violations of R.C. 2923.12 (carrying concealed weapons) or R.C. 2923.16 (improperly handling firearms in a motor vehicle).

In conclusion, it is my opinion, and you are advised, that:

1. For purposes of service of summons, writs, and other process issued by the judge or clerk of a municipal court in a civil action, pursuant to R. Civ. P. 4.1, the ministerial officer of the municipal court is (1) the bailiff of the court for service made on defendants who reside or may be found in the county or counties in which the court has territorial jurisdiction; (2) the sheriff of any other county in this state for service upon defendants who reside or may be found in such other county that is not within the court's territorial jurisdiction; and alternatively (3) any person not less than eighteen years of age who is designated by order of the court to make service of process. For purposes of service of subpoenas, in addition to the officers described above, pursuant to R. Civ. P. 45(C) the ministerial officer of the court may also be a coroner, clerk of court, constable, or a deputy of any, or an attorney at law. 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.
2. 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.