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OPINION NO. 86-63

Honorable John W. Parkerson
State Representative
State Capitol Building
Little Rock, AR 72201

Re: Authority of Constables to Serve Criminal Warrants
Issued by Municipal Courts

Dear Representative Parkerson:

This letter is in response to your request for an
opinion on the following issues:

1. Does Ark. Stat. Ann. §26-211 (Repl. 1962) or any other statute authorize constables to serve criminal warrants issued by a Municipal Court?
2. If constables may serve criminal warrants issued by a Municipal Court, are they entitled to payment for their services?
3. May constables serve warrants outside their particular township?

With regard to the first issue, Ark. Stat. Ann. §§26-210, 211 (Repl. 1962) provide:

26-210. Conservator Of Peace -- Arrest For Offenses In His Presence. -- Each constable shall be a conservator of the peace in his township and shall suppress all riots, affrays, fighting and unlawful assemblies, and shall keep the peace and cause offenders to be arrested and dealt with according to law. And if any offense cognizable before a justice of the peace in his township shall be committed in his presence, the constable shall immediately arrest the offender and cause him to be dealt with according to law. [Rev. Stat., ch. 29 §15; Act Dec. 26, 1848, §2, p. 36; C. & M. Dig. §§1448, 1449; Pope's Dig., §§1749, 1750; Acts 1941, No. 12, §1, p. 24.]

26-211. Service Of Process -- Pursuit Of Felon. -- Nothing in this act [§§26-210, 26-211] shall be construed to deprive a constable of authority to serve warrants,

summons, writs and other process as now provided by law. Nothing in this act shall prevent the pursuit by a constable of a person suspected of having committed a supposed felony in his township, though no felony has actually been committed, if there is reasonable grounds for so believing. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay. [Acts 1941, No. 12, §2, p. 24.]

In addition, Ark. Stat. Ann. §12-1730 (Repl. 1979) lists the general fee schedule for constables, including a fee for service of a criminal warrant.

With regard to the second issue, however, Ark. Stat. Ann. §§22-716-717 (Repl. 1962) specifically provides:

22-716. Fees To Constables In Criminal Cases Prohibited -- Cities To Which Act Applicable. -- All cities in which municipal courts have been established, or in which such courts may hereafter be established, under the provisions of section 9897 of Pope's Digest [§22-701], and the townships in which such cities are situated, and in which such cities there are now located, or may hereafter be located, state-supported educational institutions with campus enrollments of not fewer than fifteen hundred (1,500) students, shall be subject to the provisions of this act [§§22-716 --22-718]. [Acts 1941, No. 80, §1, P. 165.]

22-717. Constables and Deputies Not To Receive Fees In Criminal Cases -- Civil Cases Excepted. -- No constable, nor any deputy constable, shall be allowed, or receive, any fee, costs, penalty, or any payment or compensation of any kind or nature in any criminal suit, prosecution, arrest, or in any criminal proceeding whatsoever; provided, nothing in this act [§§22-716 - 22-718] shall be construed to prohibit the payment to constables of the fees now provided by law in civil cases. [Acts 1941, No. 80, §2, p. 165.]

Apparently, constables may serve criminal warrants issued by municipal courts, but no fees or payment of any kind may be collected.

With regard to the third issue, Ark. Stat. Ann. (Repl. 1979) and §22-730 provide:

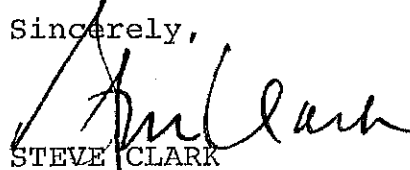
27-326. Power Of Constable Extends Throughout County. Any constable, to whom any process may be directed, shall have the power to execute such process anywhere within his county. [Act Dec. 21, 1846, §4, p. 66, M. Dig. §1465; Pope's Dig. §1766.]

22-730. Service Of Summons And Other Process -- Arrests For Law Violations. -- All summons and other process in any civil cause pending in any municipal court in any city subject to this Act, where the defendant or part of the defendants reside in the township in which the court is situated, shall be directed to the constable of the township or the sheriff of the county wherein the court sits, all other summons and process in civil causes pending in said court shall be directed to the sheriff of the county wherein the court exists. Where an arrest for a violation of the state laws committed within the townships wherein the court sits is made upon a warrant filed by the prosecuting attorney, or his deputy, such warrant to arrest shall be directed to the constable of the township or the sheriff of the county wherein the court sits, where a warrant for arrest is issued for the violation of a law of the state committed outside of township wherein the court sits but in the county subject to this Act, upon an information filed by the prosecuting attorney, or his deputy, such warrant of arrest shall be directed to the sheriff of the county, and all other process in said proceeding shall be directed to said sheriff. Provided, however, that any sheriff or constable of any township in a county subject to this act may arrest an offender for a violation of any state law committed anywhere in said county, and bring said offender before the municipal court for trial, and such officer shall serve all process in said cause. The chief of police, and his assistants shall serve all process for violations of city ordinances of the city wherein the municipal court sits, and all criminal process for violations of state laws inside the city limits of a city subject to this Act, where the arrest is made by a policeman of such city or information is filed by city attorney of such city. [Acts 1927, No. 60 §25, p. 157; Pope's Dig., §6621; Acts 1953, No. 346, §1, p. 954.] (Emphasis added.)

It appears that a constable may arrest an offender for a violation of any state law committed anywhere in the county, but that any arrest warrants for violations of statelaws committed outside the township where the court sits but in a county subject to the Act will be directed to the sheriff.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Patricia G. Cherry.

Sincerely,


STEVE CLARK
Attorney General

SC/PC/pw