

4-1-1931

Territorial Jurisdiction of Local Law Enforcement Officers

Charles M. Kneier

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>Part of the [Law Commons](#)

Recommended Citation

Charles M. Kneier, *Territorial Jurisdiction of Local Law Enforcement Officers*, 9 N.C. L. REV. 283 (1931).Available at: <http://scholarship.law.unc.edu/nclr/vol9/iss3/3>

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

TERRITORIAL JURISDICTION OF LOCAL LAW ENFORCEMENT OFFICERS

CHARLES M. KNEIER*

The common law principle of limited territorial jurisdiction has been extended to local law enforcement officers in the United States. At common law the territorial jurisdiction of the sheriff was limited to the county.¹ When an arrest was made on a warrant, it was necessary that it be made within the jurisdiction of the officer making it. In case, however, a felony was committed, it was the duty of the sheriff "to raise the hue and cry and thus pursue the criminal into any other jurisdiction and there arrest him." This power was limited to cases of felony, no such right of pursuit existing in cases of misdemeanors.² And if a prisoner escaped "and fly into another county, the sheriff or his officers, upon fresh suit, may take him again in another county."³

These common law principles have been applied to local law enforcement officers in the United States. In the absence of statutory provision, sheriffs, constables, marshals and police have no jurisdiction beyond the territorial boundaries of the area for which they have been selected. When acting beyond the boundaries of their jurisdiction they are treated as private persons acting without legal process. Their territorial jurisdiction may, however, be extended by statutory provision.

Jurisdiction of Sheriffs and Constables.

In the absence of statutory provisions, "the power of a sheriff is limited to his own county. He is to be adjudged a sheriff in his own county and not elsewhere."⁴ It has been held that where a sheriff of

* Assistant Professor of Political Science, University of Illinois.

¹ *Gregson v. Heather*, 2 Ld. Raym. 1455 (1726), s. c. 2 Strange 727; *Devanage v. Dalby*, 1 Douglas 383 (1780); *Webber v. Manning*, 1 Dowl. P. C. 24 (1831); *Thompson v. Burton*, 1 Dowl. P. C. 428 (1832); *Lloyd v. Smith*, 1 Dowl. P. C. 372 (1832); *Boynton's Case*, 3 Co. 43 (1592); *Ridgway's Case*, 3 Co. 52 (1594).

² *Hale's P. C.* 115 (1800); *Butolph v. Blust*, 5 Lans. 84 (N. Y. 1871).

³ BLACKSTONE, COMMENTARIES, 415; R. C. SEWELL, A TREATISE ON THE LAW OF SHERIFF (1845), 73. See also W. H. WATSON, THE LAW RELATING TO THE OFFICE AND DUTY OF SHERIFF (1834); T. G. CROCKER, THE DUTIES OF SHERIFFS (1890); B. D. SMITH, THE POWER, DUTIES AND LIABILITIES OF SHERIFFS, CORONERS AND CONSTABLES (1883).

⁴ *Page v. Staples*, 13 R. I. 306 (1881). Also see: *Washoe Co. v. Humboldt Co.*, 14 Nev. 123 (1879); *Gardner v. Jenkins*, 14 Md. 58 (1859); *Evans and*

one county went into another county to arrest a person charged with crime in his county he "had no more authority there to make arrests than any other private citizen had, and consequently no more right to carry a weapon concealed than any other private citizen had." The sheriff in this case was held not to be in pursuit of escaped offenders, within the meaning of the laws of the state, but had simply heard that parties for whom he had warrants were in the other county.⁵

The Court of Appeals of Texas held that it was reversible error in a trial for the murder of a law enforcement officer, who was making an arrest beyond his territorial jurisdiction, not to instruct the jury that the attempted arrest was unlawful. This information should, according to the court, have been given to the jury in determining whether the defendant was guilty, and if so, of what grade of offense.⁶ In making an arrest beyond the boundaries of his county the sheriff is acting as a private citizen.⁷

The Supreme Court of Missouri, however, has upheld the arrest by a sheriff of one county made in another county, even though the warrant was addressed to the sheriff commanding him to arrest the man "if he be found in your county." Since this was a habeas corpus proceeding the court held that "such a claim, even if supported," would be of no avail as the question as to how the officer obtained custody "would not be a proper matter of inquiry in this proceeding."⁸ In such a case the court will not look into the legality of the arrest but only into the legality of the detention.⁹

A sheriff may, "upon fresh pursuit, retake a prisoner who has escaped from his custody into another county."¹⁰ If the original arrest was upon a writ, the jurisdiction to which it extended is of no consideration, "for he retakes him, not by that writ, but by virtue of the hold he had on him by the arrest."¹¹ It has been held, however, that

Love v. Wait, 5 J. J. Marsh 110 (Ky. 1830); York v. Commonwealth, 82 Ky. 360 (1884); Benson v. Smith, 42 Me. 414, 66 A.M. DEC. 285 (1856); Cunningham v. County of San Joaquin, 49 Cal. 323 (1874); Sturm v. Potter, 41 Ind. 181 (1872).

⁵ Shirley v. State, 100 Miss. 799, 57 So. 221 (1912).

⁶ Jones v. State, 26 Tex. App. 1, 9 S. W. 53 (1888).

⁷ McCaslin v. McCord, 116 Tenn. 690, 94 S. W. 79 (1906).

⁸ Schwartz v. Dutro, 298 S. W. 769 (Mo. 1927).

⁹ *Ex parte* Barker, 87 Ala. 4, 6 So. 7 (1889).

¹⁰ Page v. Staples, *supra* note 4; Howard v. Lyon, 1 Root 107 (Conn. 1879). Cf. Burlingham v. Wylee, 2 Root 152 (Conn. 1794).

¹¹ Pearl v. Rawdin, 5 Day 244 (Conn. 1812). Cf. Cooper v. Adams, 2 Blackf. 294 (Ind. 1830).

a sheriff could not pursue and retake in another state a prisoner who had escaped from his custody, on civil process.¹²

Since "a sheriff is an officer of the county, and in the absence of express provision his powers do not go beyond the territorial limits of his county," he may not go into another county and levy an attachment upon or take by writ of replevin goods or property situated in the other county.¹³ If a sheriff levies on and sells a tract of land, only a part of which lies in his county, the deed conveys only the land lying in his county.¹⁴ And a sheriff's sale of personal property not then within the county would convey no title.¹⁵

As a sheriff has no jurisdiction in another county, neither does he have any authority in another state. The Supreme Court of New York has held that when the sheriff of a Pennsylvania county came into New York with a bench warrant issued to him as sheriff, upon an indictment found in the county, he was not authorized to make an arrest and carry the person back to Pennsylvania. The court stated that "In respect to those acts he is to be treated as a private person acting without legal process."¹⁶ And where a deputy sheriff of Oklahoma, under a warrant issued by a court in that state, arrested a person in the state of Kansas it was held to be unlawful and to constitute duress.¹⁷

Constables are usually selected for a district smaller than a county. In several states, however, they have been held to have jurisdiction throughout the county.¹⁸ This is based, in most states,

¹² *Bromley v. Hutchins*, 8 Vt. 194, 30 Am. Dec. 465 (1836). Also see: *Dick v. Bailey*, 2 La. Ann. 974, 46 Am. Dec. 465 (1847); *Brownell v. Manchester*, 1 Pick. 233 (Mass. 1822).

¹³ *Morrell v. Ingle*, 23 Kan. 32 (1879); *Dederick v. Brandt*, 16 Ind. App. 264, 44 N. E. 1010 (1896); *Jones v. Baxter*, 146 Ala. 620, 41 So. 781 (1906); *Whitworth v. Wing*, 125 S. C. 146, 118 S. E. 177 (1923); *Dinkgrave v. Sloan*, 13 La. Ann. 393 (1858).

¹⁴ *Finley v. South Carolina Canal and R. R. Co.*, 2 Rich. 567 (S. C. 1846); *Alfred v. Montague*, 26 Texas 732, 84 Am. Dec. 603 (1863).

¹⁵ *Baker v. Casey*, 19 Mich. 220 (1869).

¹⁶ *Mandeville v. Guernsey*, 51 Barb. 99 (N. Y. 1865). Cf. *Nicholls v. Ingersoll*, 7 Johns. Rep. 145 (N. Y. 1810).

¹⁷ *Stuart v. Mayberry*, 105 Okla. 13, 231 Pac. 491 (1924).

¹⁸ *Sullivan v. Wentworth*, 137 Mass. 233 (1884); *Cundiff v. Teague*, 46 Tex. 475 (1877); *Dade v. Morris*, 7 N. C. 146 (1819); *Commonwealth v. Hughes*, 10 B. Mon. 461 (Ky. 1850); *Norris v. Mayor of Smithville*, 1 Swan 164 (Tenn. 1851); *M'Neale v. Clarke*, 3 Gratt. 299 (Va. 1846); *Henry v. Waldrop*, 206 Ala. 135, 89 So. 371 (1921); *Medlin v. Seideman*, 39 Tex. Civ. App. 553, 88 S. W. 250 (1905); *Texas Land and Immigration Co. v. Masterston*, 11 Tex. Civ. App. 483, 33 S. W. 376 (1895); *Lapsley v. Georgia Loan, Savings and Banking Co.*, 99 Ga. 370, 27 S. E. 717 (1896); *Davis v. Sanderlin*, 119 N. C. 84, 25 S. E. 815 (1896); *Allor v. Board of Auditors of Wayne Co.*, 43 Mich. 76, 4 N. W. 492 (1880). Cf. *Upper Appomattox Co. v.*

on statutory provisions. In other states their jurisdiction has been held to be limited to the city, town, township or other district for which they are selected.¹⁹ As in the case of the sheriff, a constable has no jurisdiction beyond his own county; when he crosses the boundary he assumes the status of a private citizen.²⁰

Jurisdiction of Police and Marshals.

It is the general holding of the courts that "in the absence of any statute conferring the power, that municipal officers, such as marshals and policemen, have no official power to apprehend offenders beyond the boundaries of their municipalities."²¹ The Supreme Court of North Carolina has upheld a verdict of two hundred dollars damages for arrest in such case;²² and the Supreme Court of Wisconsin has upheld a verdict for seven hundred and fifty dollars under similar circumstances.²³

As has been pointed out above, at common law an officer could pursue an offender beyond the boundaries of his jurisdiction in case of felony, but not in the case of a misdemeanor. The Court of Appeals of New York has held that under this principle a police officer may not pursue a man outside the city limits and arrest him for a misdemeanor committed within the city.²⁴ The Supreme Court of North Carolina has held that where police officers attempted to arrest a man for "loud and profane swearing," and he resisted and escaped with their "billies," they had no right to pursue him beyond the town limits in order to arrest him. The court took the view that "when the prisoner had escaped from the custody of the officer, he certainly had no more power or authority to arrest him than he had

Buffaloe, 121 N. C. 37, 27 S. E. 999 (1897); *State v. Sigman*, 106 N. C. 728, 11 S. E. 520 (1890); *Lafontaine v. Greene*, 17 Cal. 294 (1861); *Lowe v. Alexander*, 15 Cal. 296 (1860).

¹⁹ *Lawson v. Buzines*, 3 Harr. 416 (Del. 1842); *Divine v. Bailey*, 62 Ga. 235 (1879); *Riley v. James*, 73 Miss. 1, 18 So. 930 (1895).

²⁰ *Ledbetter v. State*, 23 Tex. App. 247, 5 S. W. 226 (1887); *Kindred v. Stitt*, 51 Ill. 401 (1869); *Copeland v. Islay*, 19 N. C. 505 (1837). Cf. *Krug v. Ward*, 75 Ill. 603 (1875); *Allen v. Napa County*, 82 Cal. 187 (1889); *Dix v. Batchelder*, 55 Vt. 562 (1883).

²¹ *Rodgers v. Schroeder*, 287 S. W. 861 (Mo. 1926). Also see: *In re Hotchkis*, 6 D. C. Rep. 168 (1866); *Holder v. St. Louis and S. F. R. Co.*, 155 Mo. App. 664, 135 S. W. 507 (1911); *Loewer's Gambrinus Brewing Co. v. Lithauer*, 73 N. Y. Supp. 947 (1901); *Tausend v. Handlear*, 68 N. Y. Supp. 77 (1901). Cf. *Commonwealth v. Martin*, 98 Mass. 4 (1867).

²² *Martin v. Houck*, 141 N. C. 317, 54 S. E. 291 (1906).

²³ *Karney v. Body*, 186 Wis. 594, 203 N. W. 371 (1925).

²⁴ *Butolph v. Blust*, 41 How. Fr. 481 (N. Y. 1871).

when the original arrest was made, and his power in the latter case could only be exercised within the town limits."²⁵

A case was before the Court of Appeals of Kentucky in 1914 where a prisoner who had been arrested in Kentucky, in order to defeat arrest, forcibly carried the officer across the state line into Tennessee. The question in this case was as to whether he continued to be a prisoner. While across the line in Tennessee the prisoner was shot by a brother of the arresting officer, and the widow was suing the marshal and his bondsmen for failure to give protection to the prisoner. They defended on the grounds that when they crossed the line and got beyond the territorial jurisdiction of the town, his authority ceased and he was no longer acting in his official capacity. The court emphasized the fact that the prisoner had already been arrested before leaving the town in which the marshal had authority, and held that even though they had crossed the town line he was still in lawful custody.²⁶

Several states by statutes authorize law enforcement officers from whom persons who have been arrested, escape or are rescued, to immediately pursue and retake them at any time and in any place in the state.²⁷ The Supreme Court of Tennessee has held that where the statute authorized an officer from whose custody an arrested person had escaped to "immediately pursue and retake him, at any time and in any place within the state," this does not authorize an officer to arrest without a warrant, a person who "has escaped from jail or from custody when the pursuit is not immediate or fresh."²⁸ The Supreme Court of Mississippi has also held that a similar statute of that state did not authorize a deputy sheriff to go into another county after hearing that such person was there. This was not a case of hot pursuit and the conviction of the officer for carrying concealed weapons in the other county was upheld.²⁹

²⁵ *Sossamon v. Cruse*, 133 N. C. 470, 45 S. E. 757 (1903).

²⁶ *Bowlin v. Archer*, 157 Ky. 540, 163 S. W. 477 (1914).

²⁷ OKLA. REV. LAWS (1921) §2482; ORE. LAWS (Olson, 1920) §1770; IOWA CODE (1927) §13477; KAN. REV. STAT. ANN. (1923) §§ 62-1205; MINN. STAT. (Mason, 1927) §10575; UTAH LAWS (1917) §8732; MISS. ANN. CODE (Hemingway, 1927) §1267; IND. ANN. STAT. (Burns, 1926) §2160; NEV. REV. LAWS (1912) §6968; MONT. REV. CODES (Choate, 1921) §11771; IDAHO COMP. STAT. (1919) §8741; S. D. REV. CODE (1919) §4566; TENN. ANN. CODE (Co. Ed., 1918) §7006. See also TEX. REV. CRIM. STAT. (1925) p. 38, art. 244.

²⁸ *McCaslin v. McCord*, *supra* note 7.

²⁹ MISS. ANN. CODE (Hemingway, 1927) §1272; *Shirley v. State*, *supra* note 5.

The jurisdiction of local officers has in some cases been extended by statute. As has been pointed out above, in some states, constables have by statute been given jurisdiction throughout the county.³⁰ The jurisdiction of city police and of town and village marshals has also been extended in some cases beyond the territorial boundaries of the town or village.³¹ This is usually extended in such cases to cover the county. Policemen in South Dakota possess within the corporate limits of the municipality, and within one mile beyond, the powers of constables. They were also given authority "to pursue and arrest any person fleeing from justice, in any part of the state."³² Police in Connecticut may, with the consent of the authority to which they are subject, and while acting under authority of the superintendent of state police, go into any part of the state.³³

The laws of Iowa provide that when a public offense is committed on the boundary line of two counties, or within five hundred yards thereof, the jurisdiction is within either county.³⁴ Under this statute the Supreme Court of the state has upheld the arrest by a constable of one county for an offense committed within and while the defendant was in the other county.³⁵

Some courts place a strict interpretation upon statutes extending the jurisdiction of local law enforcement officers. The laws of Georgia provide that "an arresting officer may arrest any person charged with crime, under a warrant issued by a judicial officer in any county of the state, without regard to the residence of said arresting officer." In upholding a conviction of a police officer for false imprisonment, where an arrest was made in another county, the Court of Appeals of Georgia said: "This was evidently intended to embrace such officers only as are authorized under the state law to execute warrants, and was not intended to embrace such officers as

³⁰ *Supra* note 18. See also: IND. ANN. STAT. (Burns, 1926) §§1995 and 12018; DEL. REV. CODE (1915) §1412; OKLA. COMP. STAT. (1921) §3445; WYO. COMP. STAT. ANN. (1920) §6660; KY. STAT. (Carroll, 1926) §440; ARK. DIG. STAT. (Crawford and Moses, 1921) §1448.

³¹ COLO. COMP. LAWS (1921) §9039; MICH. COMP. LAWS (Cahill, 1915) §2954; TEX. REV. CIV. STAT. (1925) §§998-9; *State v. Woodard*, 144 La. 845, 81 So. 337 (1919); *Williams v. State*, 44 Ala. 41 (1870); *Newburn v. Durham*, 88 Tex. 288, 31 S. W. 195 (1895); s. c. 32 S. W. 112 (1895); *Dudley v. Janes*, 6 Tex. Civ. App. 466, 26 S. W. 445 (1894).

³² S. D. REV. CODE (1919) §6301.

³³ CONN. GEN. STAT. (1918) §2271.

³⁴ IOWA CODE (1927) §13452.

³⁵ *State v. Seery*, 64 N. W. 631 (1895); *State v. Niers*, 87 Ia. 725, 54 N. W. 1076 (1893); *Floyd Co. v. Cerro Gordo Co.*, 47 Ia. 186 (1877).

were constituted arresting officers by virtue of the laws of a municipality."³⁶

The St. Louis Court of Appeals has stated that statutes authorizing municipal law enforcement officers "to make arrests upon view and without process, being in derogation of liberty, are strictly construed." The laws of the state provided that a city marshal should have the power to serve and execute all warrants or other process issued by the police judge of the city "at any place within the limits of the county." The court upheld a verdict for five hundred dollars damages against a marshal for pursuing a car beyond the city limits for failure to make a boulevard stop. The court held that there was nothing in the statute from which such power could be implied and stated that: "The power of such officers to arrest without process for mere quasi criminal offenses arising from the violation of ordinances is liable to serious abuses, and ought not to be enlarged by judicial construction beyond what is expressly granted or necessarily implied in the statute."³⁷ The court emphasized the fact that the offense here was not a felony.

It has been held that the police of St. Louis may arrest in any part of the state for an offense committed within the city. They may not, however, arrest in St. Louis County for offenses committed within the county but outside the city. To uphold the right of the police to go outside the city and make arrests in such case, would, according to the Supreme Court of Missouri, be "to absolutely ignore all the principles of local self government." The court was here interpreting the laws providing for the state controlled police system of St. Louis.³⁸

It is a generally accepted principle that a warrant of arrest may not be executed beyond the boundaries of the county in which the officer issuing it resides.³⁹ Several states, however, by statute, authorize an officer holding a warrant to pursue and arrest the person named in any county of the state. In some cases such statutes apply only to the sheriff, but in most states to any officer in whose hands the warrant of arrest is placed. For the purpose of apprehending

³⁶ *Coker v. State*, 14 Ga. App. 606, 81 S. E. 818 (1914).

³⁷ *Rodgers v. Schroeder*, *supra* note 21.

³⁸ *State v. Stobie*, 194 Mo. 14, 92 S. W. 191 (1906).

³⁹ *Ex parte Crawford*, 148 Wash. 265, 268 Pac. 871 (1928); *Moak v. De Forrest*, 5 Hill 605 (N. Y. 1843); *Young v. State*, 117 So. 3 (Ala. 1928); *Knight v. Miles*, 308 Mo. 538, 272 S. W. 922 (1925); *George v. N. & W. R. R. Co.*, 78 W. Va. 345, 88 S. E. 1036 (1916). Cf. *Carpenter v. Lord*, 88 Ore. 128, 171 Pac. 577 (1918).

the party and serving the warrant, such officer may exercise the same authority as in his own county.⁴⁰

Some states provide that such warrant must be indorsed by a magistrate of the county in which the prisoner escapes; "thereupon the person may be arrested in such county by the person bringing such warrant."⁴¹ In Indiana before the officer holding the warrant pursues the accused into another county, he must have a certificate of the county clerk attached thereto, stating that the justice of the peace or city judge signing the warrant was duly commissioned and qualified.⁴²

Conclusion.

The courts have followed the common law principle of limited territorial jurisdiction for local law enforcement officers. Though selected by the local areas, as counties, cities and towns, such officers are engaged primarily in the enforcement of state law. And when suit is brought against such local area for the torts of these officers the courts follow the principle of non-liability on the grounds that such officers are acting in a governmental capacity, and are, in brief, agents of the state. Following this line of reasoning, local law enforcement officers, as agents of the state, might well be given a more extensive territorial jurisdiction. Law enforcement is no longer a localized problem. There are practical benefits to be derived from an extension of the jurisdiction of such local officers. To prevent conflict of authority this might well be subject to certain limitations. But with proper safeguards it seem that such extension would be desirable. This might be accomplished by the abandonment by the courts of the old common law principle; or it might be secured by statutory enactment, as has already been done in several states. The latter method seems to offer greater possibilities of securing the change.

⁴⁰ OHIO GEN. CODE (Page, 1926) §13502; VA. CODE ANN. (1924) §4825; WIS. STAT. (1927) §361.03; ARK. DIG. STAT. (Crawford and Moses, 1921) §§513 and 562; WYO. COMP. STAT. ANN. (1920) §7347; WASH. COMP. STAT. (Remington, 1922) §1950; ILL. REV. STAT. (Cahill, 1929) c. 38, §694; MONT. REV. CODES (Choate, 1921) §§11737-8; TEX. REV. CRIM. STAT. (1925) p. 36, art. 223; W. VA. CODE ANN. (Barnes, 1923) §2792; UTAH LAWS (1917) §§8692-4; MINN. STAT. (Mason, 1927) §§10575-8; ME. REV. STAT. (1916) c. 135, §5. See also: *Nadeau v. Conn.*, 142 Wash. 243, 252 Pac. 913 (1927); *Ressler v. Peats*, 86 Ill. 275 (1877); *Little v. Rich*, 55 Tex. Civ. App. 326, 118 S. W. 1077 (1909).

⁴¹ MO. REV. STAT. (1919) §3815; ALA. CODE (1923) §3273; *Coleman v. State*, 63 Ala. 93 (1879).

⁴² IND. ANN. STAT. (Burns, 1926) §2092.