

SEARCH AND SEIZURE:
CONSTITUTIONALLY CHARTERED CITIES:

Municipal Court, chartered
city, unauthorized to issue
warrants for search and
seizure.



March 1, 1955

Honorable Cowgill Blair, Jr.
Prosecuting Attorney
Jasper County
Joplin, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads:

"Under our new home rule Charter here it is provided that the Municipal Judge shall have the same power to issue warrants for search and seizure as authorized for circuit judges and magistrates upon application of the City Attorney, with the warrants to be issued and directed to the Chief of Police. As I understand it, our State statutes provide for the issuance of search warrants by circuit judges and magistrates and do not mention anyone else.

"Our City police have been searching and seizing stolen property upon warrants issued by the Municipal Judge, using the same form as the magistrate upon application of the City Attorney and directed to the Chief of Police. Where felonies are involved, this office will have to rely upon such evidence in the Magistrate and the Circuit Courts.

"I would, therefore, appreciate your furnishing me your opinion, at a time convenient to you, as to the validity and legality of the Charter provision providing for such search and seizure. This provision is contained in Article IX, Section 9.01, Municipal Court: Jurisdiction and Powers, which reads

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as follows: 'There shall be a municipal court which shall have jurisdiction as prescribed herein or by law or ordinance to . . . issue warrants of arrest, and search warrants or warrants for search and seizure as authorized by law for circuit judges or magistrates, directed to the chief of police or other police officers of the city upon application of the city attorney, assistant city attorneys, chief of police, or other police officers. . . .'

You specifically inquire as to the validity of Article IX, Section 9.01 of said charter quoted in your request. This request presents a legal question of first impression and we find no authority directly in point.

The City of Joplin is now constituted and known as a constitutionally chartered city created by virtue of Section 19, Article VI, Constitution of Missouri, 1945, said city having adopted a charter by majority vote of its electors in conformity with the foregoing constitutional provision.

The only constitutional amendment in the Constitution of Missouri dealing specifically with search and seizure is known as Section 15, Article I. However, it does not provide what courts shall issue such warrants or who shall serve them, but merely that the people of the State of Missouri shall be safe against unreasonable search and seizures.

Section 19, Article VI, supra, authorizes cities having over ten thousand inhabitants to frame and adopt a charter for its government, and provides that provisions of the charter must be consistent with and subject to the Constitution and laws of this state in a certain manner, namely, by ordinance submitting the question to the voters of said city, whether or not the city chooses a commission to frame a charter. Following this is a provision for the number of candidates for said commission by a petition. Said commission shall then draft said charter, and when this is done it is submitted at an election for the approval of the voters. If approved, it further provides for certified copies thereof to be filed in the office of secretary of state and city recorder, respectively.

There are various statutes authorizing the issuance of warrants for search and seizure by various and sundry officials under certain specified conditions; however, there is no statute

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specifically vesting such authority in a municipal court in such a chartered city. See Sections 84.270, 84.300, 84.660 and 252.100, RSMo 1949. As a general rule it has been fairly well established by statute that the magistrate or circuit court, or some court of record, is the proper authority to issue such warrants upon proper application submitted to said court.

The principal statute dealing with the issuance of such warrants, which relates solely to criminal offenses, is Section 542.260, RSMo 1949, which vests authority in any officer authorized to issue process for the apprehension of offenders when personal property has been stolen or embezzled, or complainant suspects the property is concealed someplace, if such magistrate shall be satisfied there is reasonable grounds for such suspicion. See also Section 542.380, RSMo Cum. Supp. 1953, which vests similar authority in any officer authorized to issue process for apprehension of offenders.

Section 542.020, RSMo 1949, does authorize mayors and police judges of certain incorporated cities and towns to issue process for the apprehension of persons charged with criminal offenses. However, it restricts such authority to the proceedings under Sections 542.020-140 for surety to keep the peace. Apparently such statute does not constitute authority conferring power upon such municipal court so as to classify them officers authorized to issue process for apprehension of offenders, thereby being those authorized to issue search warrants.

The rule is well stated in Volume 79, Corpus Juris Secundum, Sec. 72, p. 854, wherein it says, in part:

"* * * Municipal or police judges may not issue warrants when not properly authorized by statute; * * *"

Cornelius on Search and Seizure, 2nd Ed., Sec. 309, p. 609, reads, in part:

"May a search warrant be issued under the state or federal law for an alleged violation of such city ordinance?"

"Where, either by reason of constitutional provisions or the language of the statute, a search warrant can not issue unless there is probable cause to believe that a criminal

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offense has been committed, it is held by the weight of authority that the violation of a city ordinance is not such an offense as will sustain the issuing of the warrant."

The courts of this state have uniformly held that a violation of a city ordinance is not a criminal offense within the meaning of the Constitution. Prosecution of the violation of a city ordinance is in the nature of a civil action. See Hoffman v. Graber, 153 S.W.2d 817, l.c. 819; Daggs v. St. Louis-San Francisco RR Co., 51 S.W.2d 164, l.c. 167; Meredith v. Willock, 158 S.W. 1061, l.c. 1063, 173 Mo.App. 542.

Section 5, Article V of the Constitution of Missouri 1945 vests in the Supreme Court of Missouri authority to establish rules of practice and procedure for all courts. Acting under such authority the Supreme Court adopted Rule 33, which provides that the judge or magistrate of any court having original jurisdiction to try criminal cases may issue search warrants under certain specified conditions. There is no provision in said rule providing for anyone else issuing search warrants. It is significant to notice that the Supreme Court in promulgating said rule did not include, as one having authority to issue such search warrants, municipal courts.

In view of the absence of some specific statutory authority for such municipal courts to issue search warrants, I believe that such courts cannot do so.

CONCLUSION

Therefore, it is the opinion of this department that a municipal court created under said charter is unauthorized to issue warrants for search and seizure as provided in Article IX, Section 9.01 of said charter, and therefore such provision is invalid.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton
Attorney General

ARH/vtl