

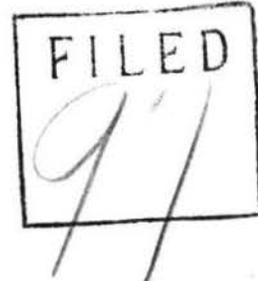
OFFICERS
CONSTABLES

Duties as to making arrests, carrying weapons, etc.
deputy constable classed as a peace officer

February 5, 1938.

2-8

Mr. James L. Williams
Sheriff
Jackson County
Kansas City, Missouri



Dear Sir:

This Department is in receipt of your letter of January 18th, wherein you make the following inquiry:

"This office has had several complaints and inquiries regarding the carrying of weapons and the policing activities of Deputy Constables in Jackson County. Our information is that certain people carry Deputy Constable commissions but do not serve any papers, writs or process in connection with the Justice Court work.

"We would like to have your opinion on the general powers and duties of constables as to: Making arrests, carrying weapons, policing the highways; and in general whether a Deputy Constable is to be classed as a 'peace officer' in the accepted meaning of that term."

Your letter does not state whether you desire the information concerning deputy constables in the City of Kansas City or in the rural sections of Jackson County.

In cities of over three hundred thousand inhabitants the appointing of deputies by a constable is controlled by Section 2418, R. S. Mo., 1929, which is as follows:

"Every constable shall have power to appoint deputies not to exceed two in number, for whose conduct he shall be answerable, and such appointments shall be in writing, and said appointments shall be filed in the office of the clerk of the circuit court having jurisdiction in such city."

Under Section 2407, R. S. Mo., 1929, if the business of a justice court district has exceeded two thousand two hundred cases in a year, two justices of the peace and two constables may be elected.

Section 2399, R. S. Mo., 1929, makes the general law applicable to constables. Said section reads as follows:

"All laws now or hereafter in force, concerning justices of the peace and constables, applicable to townships, shall be applicable to the districts of said justices and constables, as provided in this article, except where inconsistent with the other provisions hereof."

The authority of a constable generally to appoint deputies is contained in Section 11754, R. S. Mo., 1929, which is as follows:

"Every constable may appoint deputies who shall possess the same qualifications as the constable, who shall take the same oath of office and for whose conduct he shall be answerable, which appointment and oath shall

be filed in the office of the clerk of the county court; said deputy or deputies, so appointed, shall devote his time to the duties of such office, provided, no such deputy or deputies shall be appointed who is or may be directly or indirectly connected with or engaged in the mercantile business, or a member of any firm engaged in such business, or a member of or connected with any collection agency, credit house, installment house or loan agency where money or moneys are sought to be collected by suit; and any service of writ, process or execution in any court by such pretended deputy shall be void."

The general powers and duties of a constable are contained in Section 11756, R. S. Mo., 1929, which is as follows:

"Constables may serve warrants, writs of attachments, subpoenas and all other process, both civil and criminal, and exercise all other authority conferred upon them by law throughout their respective counties. "

It is a well recognized rule that a deputy constable has the same powers as his superior if he is a legally appointed deputy. In the decision of *Huhn v. Lang*, 122 Mo. 600, it was held that the powers and duties of a constable within the jurisdiction of a justice of the peace are identical with those of the sheriff,

In view of the provisions of the statutes herein quoted it would appear that there is no authority for

a constable to issue certain persons deputy constable commissions in excess of the number mentioned in the statutes, and, under the provisions of Section 11574, supra, the deputy must devote his time to the duties of the deputy constable. In other words, we find no provision to authorize a constable to issue indiscriminately deputy constable commissions, honorary in nature or to friends, which would entitle them to carry weapons and be immune from the law. As to the general powers and duties of constables in making arrests, carrying weapons and policing the highways, we think the matter is fully discussed in the case of State v. Whitehead, 295 S.W. 746:

"Constables stand on the footing of sheriffs, and other police officers whose bona fide duty it is to execute process, civil or criminal, make arrests, and aid in conserving the public peace. To such officers, whether engaged in the discharge of their official duties or not, the act has no application. State v. Davis, 284 Mo. 695, 706, 225 S. W. 707. In State v. Brown, 306 Mo. 532, 535, 267 S. W. 864, 865, Judge Blair said:

" 'The persons described in the exception are merely those not within the operation and effect of the law denouncing the crime, which is otherwise completely defined without reference to such proviso.'

"In State v. Mosby, 81 Mo. App. 207, a constable was convicted on a charge of exhibiting a pistol in a rude, angry, and threatening manner. On appeal the conviction was reversed.

Judge Gill said (page 209):

" 'It is clear that the defendant came within the persons last designated. He was manifestly within those excepted from the operation of section 3502 (Rev. St. 1889). This being so then the statute could not apply to him whether he was at the time engaged in the proper performance of his duties or not. The exemption has no such qualification. Section 3503 absolutely and unequivocally relieves all police officers, constables and the like from the operation of the provisions of the preceding section. And since there is no doubtful language used it is not in the province of the courts to modify or change its obvious import.

'As to this defendant the matter stands as though no such statute as 3502 had ever been enacted. There is no such offense at common law as the one charged against the defendant, and as the statute has no application to him, he ought to have been discharged.'

"See, also, 40 Cyc. 857.

"We think this is a sound construction of the statute as it now appears in section 3275. It has no application to sheriffs, constables, police officers, and other persons whose bona fide duty is to execute process, civil or criminal, make arrests, or aid in conserving the public peace. They may be called upon at any

moment to make an arrest or aid in conserving the public peace. The court erred in overruling the demurrer to the evidence. The judgment is accordingly reversed, and the defendant discharged."

CONCLUSION

From the above decision, we are of the opinion that the constable has powers co-extensive with the sheriff or other police officers in executing process, civil or criminal, within his own jurisdiction and this would include the policing of the highways and it being his duty, under the statute, to conserve the public peace, we naturally come to the conclusion that he should be classified as a police officer. In construing the above decision it would also appear that there is no limitation on his authority to carry weapons.

Respectfully submitted,

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Assistant Attorney General

APPROVED

J. E. TAYLOR
(Acting) Attorney General

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