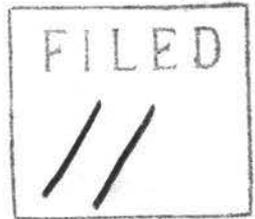


MAGISTRATE COURTS: Warrant issued by magistrate and endorsed
CRIMINAL PROCEDURE: by county clerk may be served by sheriff
of another county if endorsed by a magis-
trate of such county.



June 8, 1948

6-8

Honorable F. M. Brady
Prosecuting Attorney
Benton County
Warsaw, Missouri

Dear Mr. Brady:

This is in reply to your letter of recent date requesting an opinion from this department, which reads, in part, as follows:

"I would like to know just what it is necessary to do with reference to a State Warrant issued by a Magistrate Court in County of the Third Class so that such Warrant may be sent to the Sheriff of another County and served by him."

It is provided by section 3859, R. S. Mo. 1939, that warrants issued by a magistrate, other than a judge of the supreme court or circuit or criminal court of any county, may be executed in any part of the county within which he is such officer, and not elsewhere, unless endorsed in accordance with Section 3860. Said Section 3860 is as follows:

"If the person against whom any warrant granted by a judge of the county court, justice of the peace, mayor or chief officer of a city or town shall be issued, escape or be in any other county, it shall be the duty of any magistrate authorized to issue a warrant in the county in which such offender may be or is suspected to be, on proof of the handwriting of the magistrate issuing the warrant to indorse his name thereon, and thereupon the offender may be arrested in such county by the officer bringing such warrant, or any

officer within the county within which the warrant is so indorsed; and any such warrant may be executed in any county within this state by the officer to whom it is directed, if the clerk of the county court of the county in which the warrant was issued shall indorse upon or annex to the warrant his certificate, with the seal of said court affixed thereto, that the officer who issued such warrant was at the time an acting officer fully authorized to issue the same, and that his signature thereto is genuine."

The term "justice of the peace" as used in the above statute includes and refers to "magistrate" (Laws of Missouri, 1945, page 1079). It follows then that a warrant granted by a judge of the magistrate court against a person who has escaped or is in another county must be endorsed or certified to by the clerk of the county court, to the effect that such judge of the magistrate court was at the time of issuing said warrant an acting officer fully authorized to issue the same and that his signature thereto is genuine; and, further, must be endorsed by a magistrate in the county in which such offender is or may be suspected to be in order to authorize the sheriff of such county to serve the same.

Conclusion.

It is therefore the opinion of this department that a warrant issued by a judge of the magistrate court in one county which is endorsed or certified to by the clerk of the county court may be served by the sheriff of another county upon endorsement by a magistrate authorized to issue such warrants in such county.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR 
Attorney General

DD:ml