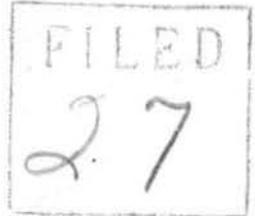


Hammett
MAGISTRATES: Members of the State Highway Patrol may
STATE HIGHWAY PATROL: execute warrants anywhere in the State of
CRIMINAL LAW: Missouri when directed to them for the arrest
of persons for criminal offenses pertaining
to the operation of motor vehicles upon the
highways of this state.

February 21, 1948



Honorable R. A. Esterly
Assistant Prosecuting Attorney
Jasper County
Carthage, Missouri

2/25

Dear Sir:

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

"A question has arisen in connection with the Magistrate Court for the Eastern District of Jasper County as to whether or not the members of the State Highway Patrol have authority to serve a warrant issued by that Court. In this particular instance a misdemeanor (weight case) occurred in the Eastern District of Jasper County. The violator was directed by the Patrol to appear in Magistrate Court but failed to do so. An information was filed and a warrant issued in due course.

"Under the above facts, would a member of the State Highway Patrol have authority to arrest the violator any place in the State of Missouri and return him to Jasper County for prosecution? The warrant above mentioned was given to the sheriff of Jasper County. Could a warrant be issued directly to some member of the State Highway Patrol?"

Apparently the offense alleged to have been committed in the presence of the highway patrolman was the operation of a motor vehicle weighing in excess of that allowed under the law to be operated on the highways of this state. Section 8406, R. S. Mo. 1939, fixes the maximum weight that may be carried over the highways of this state. Section 8410, R. S. Mo. 1939, makes it a misdemeanor to violate Section 8406, supra.

Certainly no one can question the right of the highway patrolman making an arrest when such an offense is committed

in his presence. Under Section 8358, R. S. Mo. 1939, the Legislature made it the mandatory duty of the highway patrolman to enforce and prevent violations relating to offenses committed upon the state highways and specifically vested authority in such officers to arrest any person committing certain offenses and to take them before the proper officials for prosecution. Said Section 8358 reads:

"It shall be the duty of the patrol to police the highways constructed and maintained by the commission; to regulate the movement of traffic thereon; to enforce thereon the laws of this state relating to the operation and use of vehicles on the highways; to enforce and prevent thereon the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed to protect and safeguard the highways constructed and maintained by the commission. It shall be the duty of the patrol whenever possible to determine persons causing or responsible for the breaking, damaging or destruction of any improved hard surfaced roadway, structure, sign markers, guard rail or any other appurtenance constructed or maintained by the commission and to arrest persons criminally responsible therefor and to bring them before the proper officials for prosecution. It shall be the duty of the patrol to cooperate with the secretary of state and the motor vehicle commissioner in the collection of motor vehicle registration fees and operators and chauffeurs licenses and to cooperate with the state inspector of oils in the collection of motor vehicle fuel taxes."

Furthermore, under Section 8359, R. S. Mo. 1939, members of the highway patrol are specifically declared to be state officers and shall be so deemed and taken in all courts having jurisdiction against the laws of this state. The same provision further vests in such patrolmen the same power now or hereafter vested in peace officers, except the serving or execution of civil process. Said Section 8359 reads:

"The members of the patrol are hereby declared to be officers of the state of Missouri and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of this state. The members of the patrol shall have the powers now or hereafter vested by law in peace officers except the serving or execution of civil process. The members of the patrol shall have authority to arrest without writ, rule, order or process any person detected by him in the act of violating any law of the state. When a member of the patrol is in pursuit of a violator or suspected violator and is unable to arrest such violator or suspected violator within the limits of the district or territory over which the jurisdiction of such member of the patrol extends, he shall be and is hereby authorized to continue in pursuit of such violator or suspected violator into whatever part of this state may be reasonably necessary to effect the apprehension and arrest of the same and to arrest such violator or suspected violator wherever he may be overtaken."

We also find similar authority to be vested in members of said patrol under Section 8358a, page 656, Laws of Missouri, 1943, in making arrests and investigations. Said Section 8358a reads:

"The members of the State Highway Patrol shall have full power and authority as now or hereafter vested by law in peace officers when working with and at the special request of the sheriff of any county, or the chief of police of any city, or under the direction of the superintendent of the State Highway Patrol, or in the arrest of anyone violating any law in their presence or in the apprehension and arrest of any fugitive from justice on any felony violation. The members of the State Highway Patrol shall have full power and authority to make investigations connected with any crime of any nature. The expense for the patrol's operation under this section shall be paid monthly by the

the state treasurer chargeable to the General Revenue Fund, provided, however, the amount appropriated from the General Revenue Fund shall not exceed ten per cent (10%) of the total amount appropriated for the Missouri State Highway Patrol."

Furthermore, the salary and expenses of such patrolmen are paid by the State of Missouri. (See Section 8357, page 323, Laws of Missouri, 1947, and Section 8365a, page 657, Laws of Missouri, 1943.) Section 8356, R. S. Mo. 1939, requires each member of the highway patrol to take an oath and give a bond for the faithful performance of his duties.

The foregoing statutes relating to the authority vested in members of the highway patrol and their duties clearly support our conclusion that such officers are state officers, not only is this true by reason of the statutes declaring them so but all of the foregoing provisions so indicate. We all know that the principle reason for creating the highway patrol was to enforce laws relating to the operation of motor vehicles on the highways, and to properly and efficiently carry out such duties said patrolmen must have jurisdiction over the whole state and not just a part of it. Therefore, since the members of the State Highway Patrol are state officers, they have jurisdiction coextensive with the boundaries of this state.

In view of the fact such officers are state officers, we construe Section 8359, supra, in giving such patrolmen authority as is now or may hereafter be vested in peace officers, to mean that such officers may execute a warrant for a criminal offense, not civil, anywhere in the State of Missouri, by reason of the fact their jurisdiction is state-wide and not merely confined to a county.

However, we are of the opinion that the warrant should be issued to the highway patrolman instead of to the sheriff or some other county officer since the decisions seem to hold that it is a direction only to the officer named in the warrant in the absence of a statute specifically authorizing other officers to serve such process when directed to another officer. In *McGloughan et al. vs. Mitchell et al.*, 36 S.E. 164, l.c. 165, 26 N.C. 681, the court, in so holding, said:

" * * * A constable cannot serve process addressed to the sheriff, nor can a sheriff serve process addressed to a constable. *Murfree*, Sher. Section 115. An officer

may utterly disregard any process or writ not directed to him. He is a stranger to it, and, if he exercises power under such writ, it is an act of usurpation, and he will be liable in damages for any injury done, as if he were a private citizen. * * "

In Foster vs. Wiley, 27 Michigan 244, l.c. 249, the court indicated that the officer would be liable for executing process had the statute not authorized and empowered sheriffs to serve process which constables may execute, and in so holding, the court said:

"The case of the officer is next to be considered. It is claimed, first, that he is liable because the process was not addressed to him, and therefore he had no authority to serve it. But the statute expressly empowers sheriffs to serve the process which constables may execute; * * "

(See also Winkler vs. State, 32 Ark. 539, l.c. 546, 547.)

CONCLUSION

It is, therefore, the opinion of this department that a member of the State Highway Patrol shall arrest any person violating any law relating to the operation of motor vehicles on the highways committed in his presence. Furthermore, said members of the highway patrol may execute criminal process anywhere in the State of Missouri when directed to them by a magistrate for the arrest of persons violating any law pertaining to the operation of motor vehicles on the highways of this state; however, said warrant should be directed to the member of the highway patrol and not to the sheriff or other county officers.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR *JET*
Attorney General

ARH:VLM