

ARREST - City court warrants;
COURTS - City court arrest warrants;
COURTS, CITY - Arrest warrants;
CRIMINAL LAW AND PROCEDURE - City court arrest warrants;
MOTOR VEHICLES - City court arrest warrants for DUI;
MONTANA CODE ANNOTATED - Sections 3-10-303, 3-11-102,
3-11-103(1), 7-32-4301, 7-32-4302, 46-1-201(6),
46-6-201, 46-6-202(1), 46-6-202(3), 46-6-301 to
46-6-303, 46-18-212, 61-8-401, 61-8-714.

HELD: A city court may issue an arrest warrant in the name of the State of Montana when a violation of section 61-8-401, MCA, is charged.

11 December 1986

John Warner
Havre City Attorney
P.O. Box 231
Havre MT 59501

Dear Mr. Warner:

You have requested my opinion on the following question:

Whether the Havre City Court may issue an arrest warrant in the name of the State of Montana based on a violation of a state law, section 61-8-401, MCA.

The city court has concurrent jurisdiction with the justice court of all misdemeanors committed within the county and punishable by a fine not exceeding \$500, imprisonment not exceeding six months, or both such fine and imprisonment. §§ 3-11-102(1), 3-10-303, MCA. "All misdemeanors" punishable in that manner would include most misdemeanors charged under state law. § 46-18-212, MCA. First and second offenses of driving under the influence in violation of section 61-8-401, MCA (DUIs), are punishable by a \$500 fine, imprisonment for six months, or both. § 61-8-714, MCA. A city court therefore has jurisdiction over first and second offense DUIs. (The city court would not have jurisdiction of third or subsequent DUI offenses, because the maximum fine for them is \$1,000, and the maximum imprisonment is one year. § 61-8-714(3), MCA.)

Applications for search warrants and felony complaints may also be filed in city court. § 3-11-102(2), MCA. When a complaint charging the commission of a felony is filed in city court, the city judge has the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. § 3-11-102(2), MCA. Additionally, the city court generally has exclusive jurisdiction of proceedings for violations of the civil or criminal ordinances of a city or town. § 3-11-103(1), MCA.

A city judge or city magistrate has the power to issue arrest warrants. § 46-1-201(6), MCA. When a written complaint charging a person with the commission of an offense is presented to a court, the judge will examine, under oath, the complainant and any other witnesses. § 46-6-201(1) and (2), MCA. If the judge is satisfied from the contents of the complaint and his examination of the complainant and other witnesses that there is probable cause to believe the person against whom the complaint was made has committed the offense, he will issue a summons or a warrant for the arrest of the person complained against. §§ 46-6-201(3), 46-6-301 to 303, MCA.

Pursuant to section 46-6-202(1), MCA, a warrant of arrest shall:

(a) be in writing in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) set forth the nature of the offense;

(c) command that the person against whom the complaint was made be arrested and brought before the court issuing the warrant or, if the judge is absent or unable to act, before the nearest or most accessible court in the same county or the adjoining county;

(d) specify the name of the person to be arrested or, if his name is unknown, designate the person by any name or description by which he can be identified with reasonable certainty;

(e) state the date when issued and the municipality or county where issued; and

(f) be signed by the judge of the court with the title of his office. [Emphasis added.]

The only arrest warrants issued in the name of a municipality are warrants issued for the violation of a municipal ordinance. Warrants issued for violations of city ordinances cannot be executed outside the city limits, except as provided by sections 7-32-4301 and 7-32-4302, MCA. § 46-6-202(3), MCA. However, an arrest warrant issued by a city court for the violation of a state law, including a first or second violation of section 61-8-401, MCA, would be issued in the name of the State of Montana. § 46-6-202(1)(a), MCA. A warrant issued in the name of the State is directed to all peace officers in the state and may be executed in any county of the state. § 46-6-202(3), MCA.

The statutes, when read as a whole, are clear. A city court has jurisdiction over some violations of state law, including first and second offense DUIs. A city court may issue an arrest warrant in the name of the State of Montana when a violation of state law is charged. Such a warrant could be executed in any county of the state.

THEREFORE, IT IS MY OPINION:

A city court may issue an arrest warrant in the name of the State of Montana when a violation of section 61-8-401, MCA, is charged.

Very truly yours,

MIKE GREELY
Attorney General