

Service of Process. Sheriff. City Marshal.

The sheriff, city marshal or other peace officer charged with the enforcement of the law seem to have equal authority in the service of process in criminal cases.

Helena, Mont., July 27, 1909.

Hon. H. S. Hepner,
County Attorney,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of July 24, in which you request an opinion upon the following question:

"An information is filed against a party and a bench warrant is issued out of the district court; the defendant has been apprehended in another city and another county; to whom shall the bench warrant be delivered for service; there has been more or less controversy between the sheriff's office and the city marshal's office as to who is entitled to serve the same and go after the defendant."

Section 9040, revised codes, provides that when a warrant is issued by a justice of the supreme court, or judge of the district court, it may be directed generally to any sheriff, constable, marshal or policeman in the state, and may be executed by any such officer to whom it may be delivered in any part of the state. Section 9041 provides that where a warrant is issued by any other magistrate than a justice of the supreme court or district judge, that it may be directed generally to any sheriff, constable, marshal or policeman in the county in which it is issued, and may be executed by any such officer in any part of the state. Section 9184 provides that where a warrant is issued upon an indictment or information that it may be served in the same manner as a warrant of arrest, and section 9364 provides that where a bench warrant is issued after conviction that it shall be served in the same manner as a warrant of arrest.

It will be observed that none of these sections state that any peace officer named therein shall be legally entitled to receive and serve any such warrant to the exclusion of such other peace officers. Therefore, it is largely a matter of discretion in the magistrate or officer issuing the warrant as to what officer he shall deliver it for service. However, in the absence of some good reason for not doing so, it would appear that the proper peace officer to serve a warrant issued out of the district court would be the sheriff, as he by the provisions of division IV., section 3009, is an officer of the district court. On the other hand, in the absence of some good reason for not doing so, it would appear that the proper peace officer to serve a warrant issued out of the justice's court, would be the constable, as he is, under the provisions of section 3096, an officer of such court. On the other hand, in the absence of some good reason for not doing so, it would appear that the chief of police should be the person to serve warrants issued out of the police court.

But, as stated above, the law does not prohibit any other peace officer

mentioned in section 8924 or 9040 from serving a warrant issued out of any of these courts when delivered to him for service.

Yours very truly,

ALBERT J. GALEN,

Attorney General.