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1979 Iowa AG LEXIS 75, \*; 1979-80 Op. Atty Gen. Iowa 261

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF IOWA

79-7-5

1979 Iowa AG LEXIS 75; 1979-80 Op. Atty Gen. Iowa 261

**July 3, 1979****CORE TERMS:** peace officer, bailiwick, arrest, territory, peace officers, geographical, statewide, execute, confines, altered, mutual aid, employing**SYLLABUS:**

[\*1]

CITIES AND TOWNS; COUNTIES AND COUNTY OFFICERS: Authority of peace officers outside the confines of their jurisdictions. Chapter 28E, [section 801.4, Code of Iowa](#) (1979). The exercise of the official powers of a peace officer is limited to that geographical and political unit comprising his or her bailiwick, unless expressly expanded by statute; otherwise, outside of his or her bailiwick a peace officer retains only those powers of a private citizen. An officer's bailiwick may be expanded or altered by appropriate action of cooperating political subdivisions pursuant to chapter 28E, Code of Iowa (1979).

**REQUESTBY:***Mr. John F. Callaghan, Director, Iowa Law Enforcement Academy:***OPINIONBY:**

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**OPINION:**

You have requested an Attorney General's Opinion concerning the jurisdictional limits on the powers of a peace officer in Iowa. Specifically, you pose the following questions:

1. Does a certified peace officer retain the powers of a peace officer when acting outside of the geographical limits of his or her employing municipality or county, or has he or she only the residual powers of a private citizen?
2. What is the effect on the answer to question number one if the officer is not a certified peace officer? [\*2]
3. Does the existence of a "mutual aid" agreement between local governments pursuant to Chapter 28E, Code of Iowa (1979) alter the powers of such officers outside of their usual jurisdiction?

With regard to the distinction made in your first two questions between certified and non-certified peace officers, Iowa law treats these two classifications alike for purposes of the substance of your questions. [Section 801.4, Code of Iowa](#) (1979) defines "peace officers" as,

*inter alia*, sheriffs and their regular deputies who are subject to mandated law enforcement training, marshals and policemen of cities, and peace officer members of the department of public safety. The question of certification certainly may be relevant to the issue of the scope of an officer's particular powers, but it is not relevant to the issue of whether these powers may be similarly exercised without as within the officer's territorial jurisdiction.

As Professor Rollin M. Perkins has noted, when considering the place where the powers of a peace officer may lawfully be exercised, it is convenient to speak in terms of "jurisdiction" and "bailiwick":

The word "jurisdiction" (to speak the law) has reference to the [\*3] authority of a judge or court. It is sometimes used to refer to territory recognized for other purposes and it is not improper to speak of the "jurisdiction" of a peace officer; but there is a better word for the latter purpose, the use of which tends to avoid confusion. This word is "bailiwick" (bailiff's village) which, although it once had a narrower meaning, now refers to the special district or territory of a peace officer. Thus the bailiwick of a state agent may be the state, the bailiwick of a sheriff, his county, and the bailiwick of a policeman, his town or city.

25 Iowa L. Rev. 214, 222 (1940), quoted in 1950 O.A.G. 72, 73.

Generally, a peace officer has no authority to exercise his or her powers as an officer outside of his or her bailiwick unless authorized by some special provision of the law. "In the absence of statute the power of a sheriff or officer is limited to his own county; he is to be adjudged a sheriff in his own county, and not elsewhere. He cannot, therefore, execute a writ [unless authorized by statute] out of his own county, and if he actually does so, he becomes a trespasser." 61 A.L.R. 378, quoted in 1950 O.A.G. 72, 73. "An officer who seeks to [\*4] make an arrest without warrant outside his territory must be treated as a private person." 5 Am. Jur. 2d Arrest § 50 at 742 (1962), quoted in State v. O'Kelly, 211 N.W.2d 589, 595 (Iowa 1973).

This conclusion is buttressed by a recent Ohio case which held that the express statutory conferral of statewide arrest power to those officers armed with a warrant and the silence of the statute when no warrant exists are persuasive that no such statewide non-warrant power of arrest for misdemeanor offenses was intended to be granted. Therefore, two on-duty municipal police officers were unauthorized to make a warrantless arrest for a traffic offense that they had observed outside of the city limits. City of Cincinnati v. Alexander, 54 Ohio 2d 248, 375 N.E.2d 1241 (1978).

A similar presumption is clear in the Iowa Code, i.e., that the exercise of a peace officer's powers is limited to his or her bailiwick unless expressly expanded by the language of a particular statute. See 1972 O.A.G. 439. Thus, the general language of section 804.4, Code of Iowa (1979) (an arrest warrant may be delivered to any peace officer for execution, and served in any county in the state) has been [\*5] construed as *not* authorizing the sheriff of one county to make an arrest (i.e., execute the warrant) in another county of the state. 1950 O.A.G. 72. That a similar limitation exists in section 808.5 of the Code, which provides that a "search warrant may be executed by any peace officer," is clear by the fact that section 808.5 provides for and limits an exception to this limitation, i.e., "where the property to be seized has been, or is susceptible of being, removed *from the officer's jurisdiction*, the officer executing the warrant may pursue it and search for property designated in the warrant" (emphasis added). Similar examples include Iowa Rule Civil Procedure 59 (sheriff shall serve original notice in his or her own or a contiguous county); section 817.2 (a peace officer called to the aid of the governor or attorney general shall have the same powers throughout the state as possessed by the sheriff of the county in which such peace officer is acting); and section 337.4, (sheriff shall make special investigation of infraction within his or her county at the request of the county attorney).




Hence, a peace officer is limited in the exercise of his or her official powers [\*6] to the confines of his or her territorial unit, unless this "bailiwick" is statutorily enlarged for a particular purpose. When acting outside of his or her bailiwick, unless aided by some special authority of the law, a

peace officer has only that authority which a private person would have in acting under like circumstances. Thus, for example, an officer who seeks to make an arrest without a warrant outside of his or her territory must be treated as a private person, but the officer's action will be lawful if the circumstances are such as would authorize a private person to make the arrest. State v. O'Kelly, 211 N.W.2d 589, 595 (Iowa 1973). See State v. Crum, 323 So.2d 673 (Fla. Dist. Ct. App. 1975). Such circumstances would include an arrest for a public offense committed in the person's presence pursuant to section 804.9(1) Code of Iowa (1979).

Your third question may be answered through an analysis of how a peace officer's bailiwick is altered when two or more political subdivisions of the State enter into a "mutual aid" agreement pursuant to chapter 28E of the Code. As noted above, a peace officer's bailiwick is usually limited to that geographical unit over which [\*7] his or her employing political subdivision exercises governmental control. However, this bailiwick is subject to statutory modification or expansion.

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