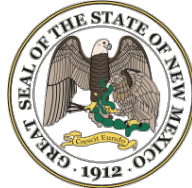


STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY



GENERAL

HECTOR H. BALDERAS
ATTORNEY GENERAL

December 1, 2022

Honorable G. Robert Cook
Municipal Court of Rio Rancho
500 Quantum Road, NE
P.O. Box 15190
Rio Rancho, NM 87124

Re: Opinion Request – Service of warrants in adjacent counties and transportation of prisoners therefrom

Dear Judge Cook:

You requested our opinion regarding: (1) whether a municipal court may order service of warrants by any law enforcement officer authorized to make arrests within adjacent counties; and (2) whether municipal courts, similar to routine intra-county transports, may order that municipality's executive branch to transport prisoners arrested in adjacent counties.

Based on our review of the relevant statutes, we conclude that a municipal court may order service of warrants by any law enforcement officer authorized to make arrests within adjacent counties so long as the underlying municipal ordinance violation prompting the warrant is not a parking violation. We also conclude that municipal courts may order an adjacent municipality's executive branch to transport prisoners arrested in adjacent counties.

Background

As you noted in your letter, NMSA 1978, § 35-15-4 was amended to extend the jurisdiction of municipal courts as it relates to warrants. *See* House Bill 110 (2017) (an Act "expanding the jurisdiction for issuing bench warrants"). As a result, NMSA 1978, § 35-15-4 now provides that "[i]n counties adjacent to the county in which the municipality whose ordinances are alleged to have been violated is located, a law enforcement officer with jurisdiction in that county may serve any municipal court process or make any arrests authorized by law to be made, except for any service or arrest emanating from parking violations alleged to have occurred in a municipality located in another county." *See* NMSA 1978, § 35-15-4

Your letter additionally notes the challenges municipal courts throughout the state face convincing persons charged with crimes to appear in response to summonses, especially those persons in counties outside the county where the court is located. As an alternative to the issuance of summonses, municipal courts are empowered to issue warrants for the appearance of defendants. A warrant for the arrest of a defendant may be issued in the first instance upon the affidavit of any person making a complaint that he has reasonable grounds to believe the party charged is guilty. *See* NMSA 1978, § 35-15-3(A). Any person arrested upon such warrant shall, without unnecessary delay, be taken before the proper officer to be tried for the alleged offense or be allowed to post an appropriate bond. *Id.*

NMRA Rule 8-203 implements the statutory authority of municipal courts to issue both summonses and warrants. The Rule provides that a warrant “shall be signed by the court and...shall command that the defendant be arrested and brought before the court.” *See* NMRA Rule 8-203. Further, the Rule provides that a summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place. *Id.* NMRA Rule 8-205 further implements municipal courts’ authority to issue warrants. That Rule further provides that “[w]henever a warrant is issued in an action...it shall be directed to a municipal police officer, a full-time salaried state or county law enforcement officer, a campus security officer, or an Indian tribal or pueblo law enforcement officer. The person obtaining the warrant shall cause it to be entered into a law enforcement information system. A copy of the warrant shall be docketed in the case file. Upon arrest, the defendant shall be brought before the court without unnecessary delay.” *See* NMRA Rule 8-205. Such an arrest warrant shall be executed by the arrest of the defendant. *Id.* If the warrant is in the possession of the arresting officer at the time of the arrest, a copy shall be served on the defendant upon arrest. *Id.* If the warrant is not in the officer’s possession at the time of arrest, the officer shall inform the defendant of the offense and of the fact that a warrant has been issued and shall serve the warrant on the defendant as soon as practicable. *Id.*

Additionally, NMRA Rule 8-206 authorizes the use of “bench warrants” by municipal courts to effect the arrest of any person who fails to appear or act in accordance with a municipal judge’s order. *See* NMSA Rule 8-206 (“If any person who has been ordered by the municipal judge to appear at a certain time and place or to do a particular thing fails to appear at such specified time and place in person or by counsel when permitted by these rules or to do the thing so ordered, the court may issue a warrant for the person’s arrest”). The court shall not issue a bench warrant for failure to pay fines, fees, or costs unless the defendant has failed to timely respond to a summons issued in accordance with Rule 8-206.1 NMRA. *Id.* By its terms, this Rule operates to permit municipal courts to issue a bench warrant for the arrest of someone who fails to appear in court in response to a summons, insofar as a summons is signed by a judge and commands appearance in compliance therewith. *See* NMRA, Rule 8-203 (providing a summons shall be signed by the court and command a defendant’s appearance); NMRA, Rule 8-204 (providing a summons shall be signed by the judge or the clerk and contain a direction that the defendant appear at the time and place set forth); *see also* Rule 8-204 (providing that court may issue a warrant for

the defendant's arrest if a defendant fails to appear in person at the time and place specified in a summons).

In sum, the statutory scheme governing municipal courts permits a municipal court to issue an arrest warrant in the first instance as the initiating process furnished to defendant, in lieu of a summons. *See* NMSA 1978, § 35-15-3(A). Additionally, the Rules governing municipal courts empower a municipal court to issue a bench warrant for the arrest of a defendant who fails to appear in compliance with a summons. *See* NMRA Rule 8-204, 8-206.¹

Analysis

NMSA 1978, § 35-15-4 empowers municipal courts to order service of warrants by any law enforcement officer authorized to make arrests within adjacent counties, with limited exception.

NMSA 1978, § 35-15-4 expands municipal courts' power to issue warrants to include warrants to be served in counties adjacent to the county in which a municipal court sits. The statute does not explicitly refer to a municipal court's issuance of a warrant. Nonetheless, by permitting a law enforcement officer with jurisdiction in a county adjacent to the county in which the municipality whose ordinances are alleged to have been violated "to serve any municipal court process or make any arrests authorized by law to be made," the clear intent of the statute is to permit a municipal court to order service of warrants by law enforcement officers in adjacent counties. *See* NMSA 1978, § 35-15-4(B). The object of that statutory provision is to permit a law enforcement officer in a county adjacent to the county in which a municipal court sits to serve municipal court process or make any arrests authorized by law. *See id.* That object could not be achieved unless a municipal court had the antecedent power to order warrants to be served in that manner, i.e. served in an adjacent county rather than the county in which the municipal court sits. Thus, a reasonable interpretation of NMSA 1978, § 35-15-4 is that it empowers a municipal court to order service of warrants in a county adjacent to the county in which the municipal court sits by a law enforcement officer authorized to make arrests in such adjacent county. *See* NMSA 1978, § 12-2A-18 (providing that a statute is construed, if possible, to give effect to its objective and purpose, and to avoid an absurd or unachievable result).

The change in the statute enacted by HB 110 further supports this interpretation. Prior to that legislation, § 35-15-4 merely provided "[a]ny constable or sheriff of the county may serve any process or make any arrests authorized to be made by any city or town officers." *See* HB 110 (2017). Thus, the previous version of the statute contemplated that any warrant issued by a

¹ We note that the use of bench warrants as provided by the Rules governing the municipal courts is statutorily authorized insofar as the Supreme Court is statutorily authorized to promulgate rules to regulate pleading, practice and procedure in judicial proceedings in all courts of New Mexico for the purpose of simplifying and promoting the speedy determination of litigation upon its merits. *See* NMSA 1978, § 38-1-1.

municipal court could only be served by a constable or sheriff of the county in which the municipal court sat. The current version of the statute expands the area where municipal warrants can be served to include adjacent counties. *See* NMSA 1978, § 35-15-4(B). It also expands the persons who can serve such warrants to include law enforcement officers with jurisdiction in adjacent counties. *Id.* Again, the object of this expanded language could not be achieved unless municipal courts were also empowered to order service of warrants by law enforcement officers in adjacent counties.

There is a limited exception as far as the types of warrants municipal courts can order served by law enforcement officers in adjacent counties. NMSA 1978, § 35-15-4 expressly provides that law enforcement officers with jurisdiction in an adjacent county may serve municipal court process or make any arrests authorized by law to be made “except for any service or arrest from parking violations alleged to have occurred in a municipality located in another county.” *Id.* Thus, municipal courts may order service of warrants by law enforcement officers in adjacent counties who are authorized to make arrests in those counties, so long as the underlying municipal violation is not a parking violation.

Municipal courts may order an adjacent municipality’s executive branch to transport prisoners arrested in adjacent counties.

From a review of the statutes governing municipal courts we conclude there is no prohibition against municipal courts ordering an adjacent municipality’s executive branch to transport prisoners arrested in adjacent counties.² Moreover, it is reasonable that such power is implied from NMSA 1978, § 35-15-4, in that the statute expressly contemplates process to be served and arrests to be made in adjacent counties arising from municipal ordinance violations. Without the power to order an adjacent municipality’s executive branch to transport prisoners from adjacent counties upon such prisoners’ arrest for municipal violations, a municipal court would be unable to administer the prosecution of such prisoners for municipal violations. That scenario would render the purpose of NMSA 1978, § 35-15-4, i.e. to allow service of process and arrest of defendants in adjacent counties, meaningless. It would be contrary to statutory intent to allow process to be served and arrests made in adjacent counties for municipal violations, but not allow municipal courts to then actually administer the prosecution of such municipal violations. Accordingly, it is our opinion a municipal court may order an adjacent municipality’s executive branch to transport prisoners arrested in adjacent counties to the extent such transport is necessary for the municipal court to administer prosecution of such prisoners.

You requested a formal opinion on the matters discussed above. This opinion is a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this

² We assume from the phrasing of your inquiry and for the purpose of our analysis that the prisoners in question would be in the custody of an adjacent *municipality* upon arrest, as opposed to in the custody of an adjacent county, such that the adjacent municipality’s executive branch would have jurisdiction over and the means by which to transport such prisoners.

Honorable G. Robert Cook

December 1, 2022

Page 5

letter to the public. If this office may be of further assistance, or if you have any questions regarding this opinion, please contact our office.

Sincerely,

A handwritten signature in blue ink that reads "Sally Malavé". The signature is written in a cursive, flowing style.

Sally Malavé
Director, Open Government Division