Opinion No. 33-562

March 10, 1933

BY: FRANK H. PATTON, Asst. Attorney General

TO: Honorable George L. Reese, Jr., District Attorney, Lovington, New Mexico.

*{*29}* Your letter of March 6th, relative to Jurisdiction of Justices of the Peace to try liquor cases and validity of warrants for arrest issued by such Justices of the Peace in these cases, has been received.

Apparently, under the present state of the law a Justice of the Peace has no jurisdiction in these cases, and if there is no jurisdiction to try such cases, it follows, in our opinion, that neither does he have any power or authority to issue warrants for arrest for violation of the liquor laws.

If this premise is true, then the issuance of such warrant is a nullity and by reciting an offense not within the jurisdiction of the Court, is void upon its face. (16 C. J. 543 at Page 307).

In the case of Territory vs. Lynch, *{*30}* 18 N.M. 15, we find a discussion which throws some light upon this subject and at page 34 of the opinion, we find this language:

"In this connection we also desire to say that we agree with the authorities holding that a ministerial officer acting under process fair on its face, issued from a tribunal or person having judicial powers, with apparent jurisdiction to issue such process, is justified in obeying it against all irregularities and illegalities except his own. Appling v. State, (Ark.) 28 L.R.A. (N.S.) 548; State v. Weed, (N.M.) 53 Am. Dec. 188."

But the cases apparently hold that where the process is void upon its face no protection is afforded, either to the source of issuance or to the officer executing such process.

The following quotations from State vs. Weed, 53, American Decisions, 189, is in part the basis for the foregoing statement:

"It is well settled that all acts done under void process are illegal; and that a void warrant affords no protection to the officer serving or attempting to serve the same. Such is the general current of all the authorities; and they appear to be based upon sound and fixed principles. The meaning of the term 'void,' when applied to legal process, is, therefore, material to be considered. A process may be void, so far as the parties originating and issuing the same are concerned, while at the same time it may be a good precept for the officer serving it. **A complainant and magistrate may both be liable for the issuing of a warrant erroneously and irregularly, without cause and without jurisdiction; while the officer into whose hands it is committed, finding it regular and legal upon its face, is not only protected in its service, but bound to obey it.**

As connected with the magistrate and party, it is a void warrant in toto, but in the hands of the officer, voidable only. The want of a clear distinction in this respect has occasionally led to some confusion; but when this distinction is kept in view, there is no difficulty in arriving at correct results."

Assuming that the Justice of the Peace has no jurisdiction over the subject matter, then the warrant is void upon its face, the authority for which statement we again quote from the same case at pages 188 and 190, as follows:

"A process is void as to all connected with it when upon its face it wants essential legal form and substance. A seal, for instance, being one of the legal requisites to give vitality to a process, is essential, and its absence renders the precept absolutely void: State v. Curtis, 1 Hayw. 471. If a warrant is issued upon a charge purporting to be based upon a certain law, and that law has been repealed or never had an existence, the warrant is void. In such a case, the process shows upon its face that it is a nullity. Or if the warrant describes no offense, or sets forth no person to be arrested, but, in attempting to do it, is general and unintelligible, in one or both respects. **Or if it is issued for an offense not within the jurisdiction of the magistrate to try, or to arrest a person over whom he has no legal authority, and these facts appear upon the papers, they are void."**

In Duckworth v. Johnston, 7 Ala. 578, the Court held that a certain warrant was a nullity, should not have been executed and that both the party causing its issuance and the officer should be held liable.

On this case the Court said at page 581:

"The case stated in the warrant, being without the jurisdiction of the justice of the peace, it necessarily follows that the warrant is void for defects apparent upon its face; and the only remaining inquire is, whether, under such circumstances, the action is misconceived.

"It is laid down, that where *{*31}* the court has jurisdiction of the cause, and merely proceeds erroneously, an action does not lie against the party who sues, or the officer or minister of the Court, who executes the precept or process. 10 Coke's Rep. 76, a; (Reynolds v. Orvis) 7 Cow. 269; (Bigelow v. Stearns) 19 Johns. 39 (10 Am. Dec. 189). But if the Court have no jurisdiction of the cause, the whole proceeding is coram non judice; and an action will lie against them, without any regard to the precept or process. 2 Wils. Rep. 384; 8 T. Rep. 424; 5 M. & S. Rep. 314. In Easton v. Calendar, 11 Wend. 94, it is said, that 'where the party or inferior magistrate, or any one acting in that character, extends the power of the Court, or statute, to a case to which it cannot be lawfully extended, they become trespassers, and are amenable to the party aggrieved, as such'."

In view of all the foregoing and in conclusion, we summarize as follows:

1. A Justice of the Peace has no jurisdiction in liquor cases.

2. Having no jurisdiction, such official has no power to issue a warrant in such cases.

3. A warrant issued by a justice of the peace in a liquor case is void upon its face.

4. Such warrant being void cannot legally be served, and upon execution of same, both the officers and the party causing its issuance are liable, and, perhaps, also the justice of the peace.