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Office of The Attorney General
State of Connecticut

August 7, 2012

Martin R. Libbin
Deputy Director, Legal Services
State of Connecticut Judicial Branch
Court Operations Division
100 Washington Street, P.O. Box 150474
Hartford, CT 06115-0474

Dear Attorney Libbin:

You have requested, on behalf of Judge Barbara M. Quinn, Chief Court Administrator, and the Judicial Branch, an opinion on whether a city sheriff is a proper officer for service of a support enforcement *capias*. You indicate that the Judicial Branch has received several invoices from a City of Bridgeport Sheriff in connection with the service of *capias* orders in support enforcement matters. Although the City of Bridgeport Charter authorizes city sheriffs to serve civil process within Bridgeport, you question whether state law permits a municipality to empower a city sheriff to serve a support enforcement *capias*. For the reasons set forth below, we conclude that a city sheriff has such authority.

A *capias mittimus* order is a civil arrest order issued to compel a person who has failed to appear in court following service of a summons, subpoena or citation. *See DiPalma v. Wiesen*, 163 Conn. 293, 298 (1972); A.G. Op. No. 2000-10 (Mar. 7, 2000). Several child support enforcement and family relations statutes authorize the issuance of a *capias* order to arrest a person who has failed to appear in response to a summons or subpoena. Conn. Gen. Stat. §§ 17b-745(a)(8) (“the court or family support magistrate may order a *capias mittimus* be issued, and directed to some *proper officer* to arrest such defendant or defendants and bring such defendant or defendants before the Superior Court for the contempt hearing” (emphasis added)); 46b-215(a)(8)(C) (same); 46b-231(m)(1) (“a family support magistrate may issue a *capias mittimus* directed to a *proper officer* to arrest the obligor or the witness and bring him before a family support magistrate” (emphasis added)). These statutes direct that a “proper officer” shall serve the *capias* order and arrest the person for the purpose of appearing before the court or family support magistrate.¹

¹ A review of the legislative history of each of these statutes revealed no evidence of the meaning of the term “proper officer.”

There is no question that a state marshal is a “proper officer” to effect civil process, including a *capias* order. Conn. Gen. Stat. § 6-32. The legislature has also expressly authorized the special police of the Bureau of Child Support Enforcement of the Department of Social Services to serve *capias* orders in child support matters. Conn. Gen. Stat. § 29-1g. Town constables “have the power in their towns to serve and execute all process legally directed to them. . . .” Conn. Gen. Stat. § 7-89, and borough bailiffs “may, within their respective boroughs, execute all legal process which state marshals or constables may execute.” Conn. Gen. Stat. § 52-50(e). No similar statute expressly addresses the authority of city sheriffs.

City sheriffs nonetheless have a long history in Connecticut.² The Bridgeport Charter presently provides for the election of six city sheriffs and that “[t]he sheriffs shall severally have, within the limits of the city, the same power and authority . . . to all intents and purposes, as sheriffs by law now have. . . .” Bridgeport Charter, ch. 2, §§ 1(e), 12. This provision can be traced to the Bridgeport charter that the General Assembly first enacted and subsequently reenacted and amended. *See* I Conn. Priv. Laws 355 (1836) (Act Incorporating City of Bridgeport, § 6); III Conn. Priv. Laws 365 (1855) (Act Amending Charter of City of Bridgeport, § 40); VI Conn. Special Laws 419 (1868) (Act Relating to Charter of City of Bridgeport, § 22); XV Conn. Special Laws 536 (1907) (Act Revising Charter of City of Bridgeport, § 104). Similar provisions regarding city sheriffs are found in the early charters of other cities. *See, e.g.*, XI Conn. Special Laws 1006 (1863) (Act Incorporating City of Norwalk, § 19); XI Conn. Special Laws 944 (1863) (Act Incorporating City of Ansonia, § 26); III Conn. Priv. Laws 457 (1853) (Act Amending Charter of City of Waterbury, § 7). After the passage of the Home Rule Act, Conn. Gen. Stat. §§ 7-187 *et seq.*, which permits municipalities to enact their own charters and relieves the legislature of the need to amend municipal charters, *see Ganim v. Smith & Wesson Corp.*, 258 Conn. 313, 366 (2001), the city sheriff provision was carried forward to the present Bridgeport Charter. *See Young v. City of Bridgeport*, 135 Conn. App. 699, 708-709 (2012) (city sheriff is authorized by charter to serve summons and process within Bridgeport). The authority for these city sheriffs, therefore, ultimately is derived from the legislature’s enactment by special act of the original city charters.

From the state’s earliest history, the courts treated city sheriffs as having the same authority within their jurisdiction as county sheriffs. *Dow v. Kelly*, 1

² In addition to Bridgeport, the charters of at least four other cities – Ansonia, Norwalk, Shelton and Waterbury – provide for the appointment or election of city sheriffs. *See* Ansonia Charter, §§ 5, 34; Norwalk Charter, §§ 1-166, 1-214; Shelton Charter, § 6.11; Waterbury Charter, § 5D-1.

Root 552, 552-53 (1793) (city sheriffs “within the limits of said city, have the same powers and authorities . . . in any case whatever, to all intents and purposes, as sheriffs of the counties...”); *Swan v. City of Bridgeport*, 70 Conn. 143, 149 (1898); *Frank Miller & Co. v. Lampson*, 66 Conn. 432, 437 (1895). The former county sheriffs plainly had authority to serve capias orders. A.G. Op. No. 2000-10 (Mar. 7, 2000) (citing former Conn. Gen. Stat. § 6-31 (“[e]ach sheriff may execute in his county all lawful process directed to him...”). In 2000, the office of county sheriff was abolished, and the civil process authority of the county sheriffs was transferred to state marshals. Public Act No. 00-99 (2000). Nothing in that legislation or its legislative history suggests that the abolition of the county sheriffs and the creation of state marshals was intended to alter the authority of city sheriffs.³

In the aftermath of the abolition of county sheriffs, a bill addressing city sheriffs was introduced in 2001. Senate Bill 567 proposed that “[n]otwithstanding any charter, special act or home rule ordinance, city sheriffs in a municipality, as defined in subsection (a) of section 7-148 of the general statutes, shall be deemed to have the authority of constables in their respective precincts.”⁴ The bill was not reported out of committee, and its legislative history does not indicate the reason for its failure. A court would be unlikely to draw from this bill’s failure a negative inference as to the authority of city sheriffs. Unsuccessful legislation such as this is a poor guide to legislative intent. *Ricigliano v. Ideal Forging Corp.*, 280 Conn. 723, 741-42 (2006); *Conway v. Wilton*, 238 Conn. 653, 679-80 (1996). The failure of a bill can be for any number of reasons, not the least of which could be the conclusion that it was unnecessary. Because it was clear prior to the abolition of the county sheriffs that city sheriffs had the same authority as to civil process, the proposed bill would at most have been clarifying legislation as to city sheriffs’ unchanged civil process powers. We do not discern in this failed bill evidence that city sheriffs lack authority to serve capias orders, a power clearly within the prior authority of county sheriffs.

Although there is no express statutory provision authorizing municipalities to empower city sheriffs to serve capias orders, “[e]very municipality shall have

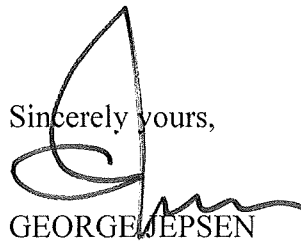
³ Moreover, the Bridgeport Charter provision, which became effective in 1993, references the authority that “sheriffs by law *now* have. . . .” Bridgeport Charter, ch. 2, § 12, ch. 22, § 1, (emphasis added). Interestingly, the Waterbury Charter references the powers of state marshals, Waterbury Charter, § 5D-1, while the Norwalk Charter references the powers of constables, Norwalk Charter, § 1-214. These distinctions would not materially alter the analysis of this opinion.

⁴ Constables have authority to serve and execute civil process within their towns. Conn. Gen. Stat. § 7-89.

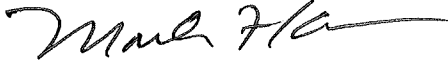
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all municipal officers . . . which are required by the general statutes or by the charter.” Conn. Gen. Stat. § 7-193(b). City sheriffs have their origins in the charters enacted by special acts of the legislature. City sheriffs were long understood to have the same authority as county sheriffs within their cities. In light of this history and the absence of any indication that the legislature intended to change this historical understanding, we conclude that a city may by charter authorize city sheriffs to execute civil process, including the service of support enforcement capias orders.

Sincerely yours,

A handwritten signature in black ink, appearing to read "George Epsen". The signature is fluid and cursive, with a large initial "G" and "E".

GEORGE EPSEN
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Mark F. Kohler". The signature is cursive and somewhat stylized.

Mark F. Kohler
Assistant Attorney General