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RQ-1095

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Opinion Committee

REQUEST FOR OPINION

QUESTION PRESENTED:

Whether, according to Sec. 341.021(e) of the Government Code, the city marshal of a municipality has the authority to investigate a matter which occurred outside the city limits of the municipality, but within the same county in which the municipality is located?

FACTS:

A rape of a 15 year old girl allegedly occurred outside the city limits of Blackwell, Texas. There are multiple defendant involved. The victim returned to her home in the City of Blackwell and called the City Marshal to report the crime. The City Marshal accompanied the victim to the local hospital and requested that a rape examination be performed. The examination kit was then forwarded to the crime laboratory by the marshal.

The City Marshal, along with his wife, who is a police officer in another city within the same county, went to the scene of the crime to look for evidence. The City Marshal also took statements from three of the four males involved as well as from the victim. The City Marshal has also performed a search of the vehicle used in the commission of the crime.

ANALYSIS:

According to V.T.C.A., Government Code, Sec. 341.021(e), "The marshal has the same power and jurisdiction as a peace officer has under the Code of Criminal Procedure to execute warrants, to prevent and suppress crime, and to arrest offenders." emphasis added. The Texas Code of Criminal Procedure provides that a peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits any offense within the officer's presence or view. Tex. Code Crim. Proc. Ann. art. 14.03(g). A city marshal is a peace officer. Tex. Code Crim. Proc. Ann. art. 2.12(3).

Former V.A.C.S. art. 998 and 999 granted city marshals and city police officers county wide jurisdiction. Bacon v. State, 762 S.W.2d 653 (Tex.App.--Houston [14th Dist.] 1988; Angeļ v. State, 740 S.W.2d 727 (Tex. Crim. App. 1987). However, that article, which is currently contained in V.T.C.a. Govt. Code, Sec. 341.021(e), supra, granted marshals the same power and jurisdiction as the county sheriff. This article was amended, effective Aug. 28, 1995, and substitutes "a peace officer" for "the county sheriff."

Since peace officers can arrest those who commit offenses within the officer's presence or view when outside the officer's jurisdiction according to the Code of Criminal Procedure, supra, can that officer also take part in the subsequent investigation of that crime, whether or not the officer made an arrest?