

# PENNSYLVANIA STATE CONSTABLES

**“First in Law Enforcement, Since 1664”**

## **Constables as Peace Officers and Law Enforcement, Not as Process Servers**

Many that hold the title of Pennsylvania State Constables, and indeed the public at large, are often unaware or are uninformed as to the role of constables within the hierarchy of the Public Safety System of the Commonwealth of Pennsylvania. Most people, including many law enforcement agencies, magistrates, citizens, and even constables themselves believe that a constable is only a judicial officer, whose only and primary goal is to act as a process server for the judicial officer or magistrate, and to effect arrests via warrant. They believe that the power of the constable is extremely limited in scope and scale. They believe that constables do not possess, and have never possessed, the power of the peace officer, mainly to enforce the law and make arrests for observed crimes. This is far from the case.

The constable in Pennsylvania originated, along with the sheriff, in the English common law system that was used by the colonists. This system established constables for every city and town, and sheriffs for every county. This dual system of elected officials allowed the citizenry to hold those that they gave power to accountable by way of vote. This, along with many other parts of English common law, were established as early as 1664, and were made official by William Penn upon his arrival in 1684.

While the historical specifics of the constable in both Pennsylvania and indeed within the United States perhaps warrants its own paper dedicated to in-depth analysis, for the purposes of this paper, know that from 1664 until the early to mid-1960s, constables in Pennsylvania were the primary, and in most cases the only, law enforcement officer in the area for much of Pennsylvania outside of the main cities. This is backed up by many historical versions of the law directing constables to enforce various laws, regulations, and titles, including criminal law (Title 18) and even motor vehicle law (Title 75). As local police departments became more common, constables in those areas began to rely on their other form of work besides peacekeeping, namely judicial services and warrant enforcement, to make their livings. Constables were and still are a self-funded agency, as the elected constable must themselves purchase any equipment they require to perform their duties, including vehicles, uniforms, firearm, and the like.

By the early 1980s, because so many constables were focusing on judicial services, the legislature of Pennsylvania passed Act 147 of 1990. This act moved constables from being elected, common law peace officers to directly under the control of the Judicial Branch of the

Pennsylvania Government. However, the Pennsylvania Supreme Court reversed the legislation in the ruling known as *In Re Act 147 of 1990*, in which they can be quoted as saying,

***“Simply stated, a constable is a peace officer. A constable is a known officer charged with the conservation of the peace, and whose business it is to arrest those who have violated it. Commonwealth v. Deacon, 8 Serg. R. 47, 49 (1822). By statute in Pennsylvania, a constable may also serve process in some instances. See generally, 13 Pa.C.S.A. § 41-13 Pa.C.S.A. § 46. See also, In re Borough High Constables, 32 Del. 335 (1944); [Rich v. Industrial Commission, 15 P.2d 641, 80 Utah 511 \(1932\); State v. Franklin, 80 S.C. 332, 60 S.E. 953, 955 \(1908\); Somerset Bank v. Edmund, 81 N.E. 641, 76 Ohio St. 396, 11 L.R.A., N.S. 1170, 10 Ann.Cas. 726 \(1907\); Leavitt v. Leavitt, 135 Mass. 191 \(1883\). As a peace officer, and as a process server, a constable belongs analytically to the executive branch of government, even though his job is obviously related to the courts. It is the constable's job to enforce the law and carry it out, just as the same is the job of district attorneys, sheriffs, and the police generally. Act 147 is unconstitutional and violates the separation of powers doctrine in our Constitution because it attempts to place constables within the judicial branch of government and under the supervisory authority of the judicial branch. It attempts to make constables "personnel of the \[judicial\] system" and this can no more be done than attempting to make the governor, members of the legislature, district attorneys or sheriffs "personnel of the system." At most, constables are "related staff" under the Rules of Judicial Administration. They cannot, however, be made part of the judicial branch under our Constitution. See, Rosenwald, supra. To attempt to do so constitutes a gross violation of the separation of powers. Personnel whose central functions and activities partake of exercising executive powers cannot be arbitrarily made part of another branch of government whose functions they do not perform. To do so interferes with the supervisory authority of the Supreme Court just as much as attempting to dictate how that authority is to be exercised over personnel who are properly part of the judicial system. See, Kremer, supra. In consequence, we find Act 147 unconstitutional and invalid.”](#)***

(Certain words were emboldened by me for purposes of drawing attention to the specific text)

The Pennsylvania Supreme Court, in its analysis, determined that the primary duty of constable, as found in both the tradition of common law and the current-at-the-time statutory law was to enforce the law and arrest offenders, and only serve process “in some instances”.

This ruling would be affirmed by the United States District Court for the Eastern District of Pennsylvania in the 2002 case of *Swineheart v. McAndrews*, 221 F. Supp. 2d 552. During that ruling, the US District Court stated that,

*“The first statute cited by plaintiff indicates when elections for constable are held, clearly indicating that constable is an elected position. See 13 P.S. § 1. The second statutory provision contains the procedure for removing a constable from office. See 13 P.S. § 31. Neither law makes any reference to how constables receive assignments, grants them any inherent right to perform particular duties, nor defines any essential function of their office. Therefore, any property*

*interest the plaintiff had in receiving assignments from the Bucks County Court of Common Pleas is not derived from statute. Nor does the decision of the Pennsylvania Supreme Court in overturning the 1990 Act create a property interest in receiving assignments from the district. If anything, the decision accomplishes the opposite, as it distinguished between the essential work of a constable as a peace officer, and other peripheral roles such as that of a process server. See Act 147, 598 A.2d at 990. Plaintiff has not identified any rule, regulation, custom, or mutually explicit understanding that would provide the basis for a property interest in receiving work from \*559 the district. See Piecknick, 36 F.3d at 1256. Indeed, after the 1999 incident at the Erickson home, subsequent litigation, and settlement agreement, plaintiff would have been aware of the conditional nature of his continued relationship with the Bucks County Court of Common Pleas.”*

(once again, I have emboldened certain words to emphasize their importance)

The Swineheart case stated that constables in Pennsylvania are NOT entitled to any form of judicial work such as warrants, bailiff duties, or process service, because their primary goal and function is to serve as a law enforcement officer, the same duties as a sheriff, state trooper, or municipal police officer.

In the court case of Commonwealth V Taylor, 677 A.2d 846, the Pennsylvania Superior Court found that constables possess the common law power to arrest for both felonies and breaches of the peace. While the term “breach of the peace” is not found within any criminal law in Pennsylvania, its common meaning is clear. The court stated that,

*“Based on this review,[12] we find that overwhelming authority supports the proposition that constables possessed the power at common law to make warrantless arrests for felonies and \*594 breaches of the peace. Further, complying with the mandate of Leet, we have examined the statutes and found no provision abrogating that power. Hence, since appellee's possession of a controlled substance with intent to deliver constitutes a felony under 35 P.S. § 780-113(f)(1), we are unable to escape the conclusion that Constable Certo was empowered to arrest appellee”*

This ruling cemented the fact that constables, like their common law counterparts in sheriffs, possess the common law power to make arrests for felonies and breaches of the peace committed in their presence.

In 2009, the legislature of Pennsylvania passed Act 49 of 2009, which updated Title 44 chapter 71, which contains the current laws governing the statutory duties of constables, their common law powers notwithstanding. Looking throughout the laws contained within Title 44, process service or judicial services are mentioned in two places. First, 44 Pa. C.S. 7153 states,

“7153. Service of process.

*If no coroner is in commission to serve process in a suit instituted in a court of this Commonwealth in which the sheriff of a county may be a party, a constable in the county where*

*the process has been issued may serve as the coroner and perform the authorized duties of the coroner.”*

This portion clearly states that a constable MAY serve as a coroner and performs the authorized duties of the coroner when it comes to process service, but is not required to do so. The only other place that process service is mentioned is in the fee portion of the statute, which simply lays out how much a constable can charge for those services and who is required to pay those services.

However, Title 44 Chapter 71 also contains the language regarding other duties of constables, especially in 44 Pa. C.S. 7158, which states,

*“7158. Arrest in boroughs.*

*In addition to any other powers granted under law, a constable of a borough **shall**, without warrant and upon view, arrest and commit for hearing any person who:*

*(1) Is guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness.*

*(2) May be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens.*

*(3) Violates any ordinance of the borough for which a fine or penalty is imposed.”*

While the statute may have been titled “Arrest in Boroughs”, the United States District Court for the Western District of Pennsylvania clarified that all Pennsylvania constables possess this power of arrest, whether they are a constable elected in a borough or not. This court case, cited as *Galluze v Miller*, 10-836, states that,

***“The preliminary issue to be decided here is whether a constable is a police officer for purposes of this claim. While there is some authority that could be construed as opposed to such a conclusion (see *Roose*, 690 A.2d at 242-43, which relied, in part, on the definition of “police officer” in the Pennsylvania Crimes Code<sup>11</sup>), the majority of authorities that this court could find on this matter suggest otherwise...the court of appeals in *County of Allegheny v. Berg*, 219 F.3d 261 (3d Cir. 2000), and *Abbott v. Latshaw*, 164 F.3d 141 (3d Cir. 1998), and the district court in *Maloney v. City of Reading*, 04-cv-5318, 2006 WL 305440 (E.D. Pa. Feb. 8, 2006), treated constables as police officers for purpose of § 1983 claims. Finally, Pennsylvania Rule of Criminal Procedure 103 defines a police officer as “any person who is by law given the power to arrest when acting within the scope of the person's employment.” Pa. R. Crim. P. 103. **The court concludes that in the context of those cases a constable is a police officer.** The court next must determine whether the evidence adduced is sufficient to withstand a motion for summary judgment***

...

*Plaintiff argued that “[e]xcepting a warrantless arrest for a felony, Constables do not have*

*the power to arrest without a warrant in Pennsylvania unless specifically given that power of the statute.” (ECF No. 35 at 2.) Plaintiff added: “There is no statute which granted the Defendant . . . the authority to arrest the Plaintiff for summary offense as he did on June 22, 2009,” and concluded “based on the undisputed material facts, Plaintiff is entitled to summary judgment on the specific issue of the violation of her fourth amendment rights.” Id.*

*The court disagrees. As discussed above, the underlying facts are far from being “undisputed” and the caselaw does not support her position. A jury will need to determine whether defendant had probable cause to believe plaintiff engaged in aggravated assault against him and whether defendant used excessive force against plaintiff.”*

Finally, constables are clearly, and indeed must be, peace officers, even if they believe that their only duty is to serve process for the courts. Pennsylvania Rule 103 of Criminal Procedure defines a police officer as the following,

***“POLICE OFFICER*** *is any person who is by law given the power to arrest when acting within the scope of the person’s employment.”*

Furthermore, Title 18 defines a peace officer in 18 Pa. C.S. 501, which states that,

*“Peace officer.” Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active State duty pursuant to 51 Pa.C.S. § 508 (relating to active duty for emergency). The term “peace officer” shall also include any member of any park police department of any county of the third class.”*

As such, it must be undisputed that constables unequivocally are peace officers under Pennsylvania law, and possess both the common law and statutory law power to arrest offenders of the law as their primary duty, and serve process only as a minor or optional task. Therefore, constables absolutely can and do make arrests for any crime committed in their presence. It would also not be remiss to remark that constables, as peace officers and under current law, may use terms to define themselves such as peace officer, law enforcement officer, or police officer, and the use of such title is supported by both common law, case law, and definitional law under current Pennsylvania Criminal Statutes.

I hope I have been able to shed some light on this topic for you. This is by no means an exhaustive list, and I am sure I have missed things. Please, do your own research.

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