

CHAPTER 363.

SEARCH WARRANTS.

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363.01 Search warrant, who to issue. A search warrant may be issued by any magistrate who is authorized to issue a criminal warrant.

363.02 Search warrants; when issued. Upon presentation of a sworn complaint or affidavit, or of oral testimony recorded by a phonographic reporter, showing probable cause therefor, such magistrate shall issue a warrant to search for and seize any of the following:

(1) **STOLEN PROPERTY.** Property stolen, embezzled or obtained by false tokens or pretenses or by means of a confidence game.

(2) **COUNTERFEIT MONEY, FORGED INSTRUMENTS.** Counterfeit or spurious money or coin, forged bank notes or other forged instruments, or tools, machines or materials prepared or provided for making either of them.

(3) **OBSCENE MATTER.** Obscene literature, matter or things prohibited by section 351.38 or which may be evidence in any case arising under such section.

(4) **LOTTERY TICKETS.** Lottery tickets or materials for a lottery made, provided or procured for the purpose of drawing a lottery.

(5) **GAMBLING APPARATUS.** Gaming apparatus or implements used or kept to be used in unlawful gaming.

(6) **FIGHTING COCKS AND ANIMALS.** Animals, birds or articles used or about to be used in violation of the law relating to baiting and fighting animals.

(7) **NARCOTICS.** Any drugs manufactured, obtained or possessed in violation of chapter 161; or any smoking preparation, pipe, attachment or contrivance prohibited by said chapter.

(8) **BLUE SKY LAW.** Books, records or papers used or kept or to be used in the sale of securities contrary to chapter 189.

(9) **ALCOHOLIC BEVERAGES.** Intoxicating liquor, fermented malt beverages or alcoholic beverages possessed for the purpose of evading or violating any law of this state or property designed for the unlawful manufacture of intoxicating liquor, fermented malt beverages or alcohol.

(10) **ARTICLES USED IN COMMITTING CRIME.** Instruments or other articles which have been used in the commission of or may constitute evidence of a crime.

(11) **GAME LAW VIOLATIONS.** Any wild animal or carcass or part thereof caught, killed or had in possession in violation of chapter 29.

An affidavit and testimony of a police officer, applying for a search warrant, as to his observation of a series of contacts between named known policy gamblers, policy writers and pickup agents for various policy wheels including one E., and as to E.'s entering certain premises at certain times, and that such contacts were made for the purpose of turning over policy paraphernalia to E., and that based on the officer's experience in the investigation of policy-gambling activities he knew that policy gambling was being conducted and that policy paraphernalia was being concealed on the premises,

together with the submitted criminal record of E., which the magistrate was entitled to consider although it did not show a conviction for policy gambling, were sufficient to sustain a finding of probable cause for the issuance of a search warrant. The experience and special knowledge of police officers, applying for a search warrant, are among the facts which may be considered. A trained, experienced police officer, applying for a search warrant, may state his conclusions from what he saw, heard and smelled. State v. Harris, 256 W 93, 39 NW (2d) 912.

363.025 Replevin of seized property; motion to return seized property and to suppress evidence. Property seized on a search warrant and property seized by the officer without a warrant shall not be replevied. But the owner of the seized property may move before the criminal trial court for a return of the property or to suppress the evidence obtained under the warrant on the ground that (1) the warrant is insufficient on its face, or that (2) the property seized is not that described in the warrant, or that (3) there was not probable cause for issuing the warrant, or that (4) the warrant was executed illegally.

If the seizure was made illegally without a warrant, the motion may be made on that ground. If the motion is granted, the property shall be restored unless it is subject to confiscation or was stolen or embezzled or obtained by false pretenses or by confidence game, in which case it shall not be returned.

363.03 Warrant; to whom directed; what to contain. (1) GENERAL. The search warrant shall be directed to the sheriff or any constable or other peace officer of the county, commanding him to search the place where the things for which he is required to search are believed to be concealed, or the person believed to have them in his possession, or both, which person or place and things shall be described in the warrant, and to bring such things and the person in possession of them before the magistrate who issued the warrant or before some other magistrate or court having cognizance of the case.

(2) CONCEALED GAMBLING DEVICES, BEER OR LIQUOR. (a) Upon application of an employe of the commissioner of taxation or the attorney-general to a court of record, a warrant may be issued to search for gambling devices, fermented malt beverages or intoxicating liquors believed to be concealed on premises located in the county where the warrant is issued, or in any county adjacent thereto, and shall command that the things seized and the person in possession of them be taken before a magistrate or court of the county wherein the property is seized or the person in possession of them is found. Such warrant shall be directed to the employes of the commissioner of taxation or the attorney-general, as the case may be, and shall be executed by them.

(b) Subject to such variations the warrant so directed shall be in substantially the same form as prescribed in section 363.05. The responsibility of the commissioner of taxation and the attorney-general for the default or misconduct of their employes when so acting shall be equal to but not greater than the responsibility of a sheriff for his deputies under section 59.22. The commissioner of taxation and the attorney-general may require of their employes so acting a bond in such sum and with such sureties as they may prescribe, conditioned upon the faithful performance of their duties in and about executing such warrants, and such bond shall have the same force, effect and purport as a bond required by a sheriff of his deputy under section 59.22 (2).

History: 1951 c. 603.

Issuance of search warrants on application of employes of commissioner of taxation or the attorney general to search for gambling devices, fermented malt beverages or intoxicating liquors in the county where the warrant is issued or an adjacent county, to be executed by the employes of the commissioner of taxation or the attorney general and returned before a magistrate or court of the county having cognizance of the case, is not in conflict with any provision of the Wisconsin constitution. 40 Atty. Gen. 126.

In determining whether a requisition for extradition shows a charge of commission of a "crime," the certificate of the governor of the demanding state, although worthy of consideration, is not decisive. Reference to a statute of North Carolina in an affidavit made before a magistrate there, and accompanying a requisition for extradition puts the Wisconsin court on inquiry, especially since 328.01 directs Wisconsin courts to take judicial notice of the statutes of sister states. An affidavit made before a magistrate in North Carolina, accompanying

a requisition for extradition, and charging the person demanded with knowingly and feloniously having presented a false or fraudulent claim for the payment of a fire loss under an insurance contract and having subscribed to a false or fraudulent proof of loss, in violation of a cited North Carolina statute defining the offense and making it punishable by imprisonment for not more than 5 years or by a fine of not more than \$500 or by both, substantially charged the commission of a "crime" under the laws of the demanding state, and the Wisconsin trial court, in habeas corpus proceedings, erroneously construed the North Carolina statute as a penalty statute and not as one defining and creating a crime. An affidavit made before a magistrate in the demanding state need not provide proof sufficient to convict the person informed against, and it need not satisfy the requirements of a pleading, and inquiry into the knowledge of the affiant and the procedure had before the magistrate is beyond the jurisdiction of the courts of the asylum state. State ex rel. Kojis v. Barczak, 264 W 136, 58 NW (2d) 420.

363.04 Disposition of property. Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer (who may leave it in the custody of the sheriff, taking a receipt therefor) so long as necessary for the purpose of being produced as evidence on any trial. As soon as may be thereafter it shall be disposed of as follows, upon the order of the court:

(1) STOLEN PROPERTY. Property stolen, embezzled or obtained by false tokens or pretenses or by means of a confidence game shall be restored to the owner.

(2) MONEY. Money shall be restored to the owner unless it was a part of a slot machine, in which case it shall be forfeited and paid over to the county treasurer who shall account for and pay it over to the state treasurer pursuant to section 59.20 (5) for the use of the school fund.

(3) LIQUOR LAW VIOLATIONS. Intoxicating liquors, fermented malt beverages and personal property used in connection therewith shall, if seized in connection with a violation of section 66.054 or chapter 139 or 176, be disposed of as provided in section 176.62.

(4) UNCLAIMED PROPERTY. Property which is unclaimed or the ownership of which is unknown shall be sold at a public auction to be held by the sheriff once a year and the

proceeds, less the cost of sale and any storage charges incurred in preserving it, shall be paid into the county treasury. Money which is unclaimed or the ownership of which is unknown shall be paid into the county treasury.

(5) CONTRABAND. Articles of contraband shall be destroyed. This includes without limitation gambling devices, lottery tickets, obscene or otherwise illegal literature, counterfeit, forged or spurious money, coin or written instruments and the tools, dies, machines or materials for making them, and narcotic drugs and the implements for smoking them. But if any such articles shall be capable of innocent use, the court may in its discretion order the same to be sold and the proceeds paid over to the county treasurer who shall account for and pay them over to the state treasurer pursuant to section 59.20 (5) for the use of the school fund. Narcotic drugs may be so sold only to a person legally entitled to possess them.

(6) FIGHTING COCKS AND ANIMALS. Animals and birds seized under section 363.02 (6) shall be returned to the owner if acquitted, but if he is convicted they shall be forfeited and sold forthwith by the sheriff, and the proceeds disposed of as provided in subsection (5).

(7) FISH AND GAME VIOLATIONS. Property seized in connection with any violation of chapter 23 or 29 shall be disposed of as therein provided.

(8) FIREARMS, EXPLOSIVES, ETC. Firearms, ammunition, explosives, bombs, infernal machines, and like devices, which have been used in the commission of crime, shall be shipped to and become the property of the state crime laboratory. Articles mentioned in subsection (5) shall be turned over to said laboratory at the request of the superintendent, in lieu of destruction. The superintendent may, in his discretion, destroy any such material for which the laboratory has no use.

(9) ALL OTHER. Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct, the intention of this subsection being that useful articles be returned to their owners and other articles be destroyed or otherwise disposed of as the court may deem best.

363.05 Forms. The following forms for use under this chapter are illustrative and not mandatory:

AFFIDAVIT OR COMPLAINT

STATE OF WISCONSIN, }
.... County, } In the court of the of

A. B., being duly sworn, says that on the day of, A. D., 19.., in said county, in and upon certain premises in the (city, town or village) of in said county, occupied by and more particularly described as follows: (describe the premises) there are now located and concealed certain things, to-wit: (describe the things to be searched for) (possessed for the purpose of evading or violating the laws of the state of Wisconsin and contrary to section of the Wisconsin statutes) (or, which things were stolen, or embezzled, or obtained by false tokens or pretenses or by means of a confidence game from their true owner, in violation of section of the Wisconsin statutes) (or, which things were used in the commission of (or may constitute evidence of) a crime, to-wit: (describe crime) committed in violation of section of the Wisconsin statutes).

The facts tending to establish the grounds for issuing a search warrant are as follows: (set forth evidentiary facts showing probable cause for issuance of warrant).

Wherefore, the said A. B. prays that a search warrant be issued to search such premises for the said property, and to bring the same, if found, and the person in whose possession the same is found, before the said court (or, before the court for county), to be dealt with according to law.

(Signed) A. B.

Subscribed and sworn to before me this day of, 19...
....., Judge of the Court.

SEARCH WARRANT

STATE OF WISCONSIN, }
.... County, } In the court of the of

THE STATE OF WISCONSIN, to the sheriff or any constable or any peace officer of said county:

Whereas, A. B. has this day complained (in writing) to the said court upon oath that on the day of, A. D., 19.., in said county, in and upon certain premises in the (city, town or village) of in said county, occupied by and more particularly described as follows: (describe the premises) there are now located and concealed certain things, to-wit: (describe the things to be searched for) (possessed for the pur-

pose of evading or violating the laws of the state of Wisconsin and contrary to section of the Wisconsin statutes) (or, which things were stolen, or embezzled, or obtained by false tokens or pretenses or by means of a confidence game from their true owner, in violation of section of the Wisconsin statutes) (or which things were used in the commission of (or, may constitute evidence of) a crime, to-wit: (describe crime) committed in violation of section of the Wisconsin statutes) and prayed that a search warrant be issued to search said premises for said property.

Now, therefore, in the name of the state of Wisconsin you are commanded forthwith to search the said premises for said things, and if the same or any portion thereof are found, to bring the same and the person in whose possession the same are found, and return this warrant within 48 hours before the said court (or, before the court for county), to be dealt with according to law.

Dated this day of, 19...

., Judge of the Court.

INDORSEMENT ON WARRANT

Received by me, 19.., at o'clock ..M.

., Sheriff (or peace officer)

RETURN OF OFFICER

State of Wisconsin in Court,
. . . . County.

I hereby certify that by virtue of the within warrant I searched the within named premises and found the following things: (describe things seized) and have the same now in my possession subject to the direction of the court.

Dated this day of, 19...

., Sheriff (or peace officer)

363.06 Execution of warrant; evidence not suppressed. A search warrant may be executed at any reasonable time of the day or night, but shall be executed in the daytime if practicable. No evidence seized under a search warrant shall be suppressed because the warrant was executed in the nighttime.

363.07 Secrecy. A search warrant shall be issued with all practicable secrecy and the complaint, affidavit or testimony upon which it is based shall not be filed with the clerk of court or made public in any way until the warrant is executed. Whoever discloses prior to its execution that a warrant has been applied for or issued, except so far as may be necessary to its execution, shall be imprisoned not more than 30 days or fined not more than \$100 or both, or he may be punished as for a criminal contempt of court.

363.08 Substantial compliance. No evidence seized under a search warrant shall be suppressed because of technical irregularities not affecting the substantial rights of the accused.