

**The Bill Blackwood
Law Enforcement Management Institute of Texas**

Jurisdiction of Police Officers in a Type-
A General Law Municipality

**A Policy Research Project
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of the Requirements for the Professional Designation
Graduate, Management Institute**

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ABSTRACT

The intent of this research project was to attempt to clearly define where a police officer of a Type- A General Law Municipality has territorial jurisdiction. This issue is very important to the Fritch Police Department due to a unique situation that the department is in. The City of Fritch is located in an area that encompasses five different jurisdictions. Within this area there are several sections where other departments don't work and where certain people believe we can't.

It is concluded that the state statutes definitely need more clarification. While much was learned during the process there are still a lot of gray areas when it comes to jurisdiction. It is recommended that the City of Fritch actively pursue a cooperative agreement between the city and the adjoining jurisdictions, and that the city continue it's research into it's rights in the extraterritorial jurisdiction of the city. In that agreement, specific duties and powers can be clarified along with the territorial limits that the department may operate in. This agreement would allow the department to provide service in a much needed area already perceived as being it's area of responsibility.

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Introduction:

The City of Fritch is located in the corner of four counties, sits on the edge of a National Recreation Area and is divided into two sections separated by a county road. This particular road also runs right next to the elementary school. The National Recreation Area averages 1.5 million visitors per year and this county road is the only way into one of the most popular sections of the lake. Numerous traffic accidents occur annually on this section of roadway and traffic violations are abundant. The Fritch Police Department is constantly getting complaints about speeders and traffic violations on the road. The public doesn't understand that the road is out in the county because they see Fritch Police officers driving up and down the road all the time. The county police are unable to handle this problem because their units don't even have radar. DPS will not address the problem because it's not a state road and they consider it to be a residential street. Therefore, while the complaints and wrecks continue, there remains a jurisdictional question.

The intent of this research project is to attempt to define territorial limits of jurisdiction for a police officer of a Type-A General Law Municipality. The results of this project are to be presented to the Chief of Police and to the City Counsel for the City of Fritch.

Research for this paper focused on the Local Government Code, the Code of Criminal Procedure, and the Penal Code. Attorney General Opinions, Supreme Court Decisions and Decisions of the Court of Criminal Appeals were also investigated. To conclude the research law enforcement officials, whose departments are actively working outside what most perceive as their territorial limits, were consulted.

The intended outcome of this project is to assist in formulating a plan of action that will assist the Fritch Police Department in legally addressing some of the problems that it faces, due to its geographic location. In doing so, and drafting a workable policy, needed enforcement may be brought to an area that is a disaster waiting to happen.

Historical and Legal Context

Modern police officers, in Texas, were first established through Article 999 of the Texas Revised Civil Statutes. This statute was originally enacted in 1875. It provided that “in the prevention and suppression of crime and arrest of offenders, [the city marshal] shall have, possess and execute like power, authority and jurisdiction as the sheriff”. To clarify the term jurisdiction the Texas Supreme Court in Newborn V. Durham (1895), stated that “jurisdiction” refers “to the territory in which such power or authority can be exercised”. City police officers were established by Article 998 of the Revised Texas Civil Statutes that was originally enacted in 1907 and stated “such officers [city police] shall have like powers rights and authority as are by said title vested in city marshals”. In 1967, Art. 998 was amended by adding the words “and jurisdiction” after the word “authority”.

In several Supreme Court decisions through 1968, the courts held that, prior to the amendment to Art 998 in 1967, the common law rule applied to a city police officer’s power to arrest, with or without a warrant, and that that power ended at the city limits. The common law rule stated, “That if the Code of Criminal Procedure fails to provide a rule of procedure, the rules of common law apply and govern”. In Fort V. State (1981), and in Lopez V.State (1983), the courts held that a police officer has County wide Jurisdiction. In Love V. State (1985) the court re-applied the common law rule and once again stated that

a police officer was restricted to the city limits. Finally in Angel V. State (1987), the court pointed out that by statute a police officer was granted county wide jurisdiction and that the common law rule no longer applied. This decision was re-affirmed in Landrum V. State (1988), Bacon V. State (1988); Morris V. State (1990); and in Thomas V. State (1993).

Articles 998 and 999 were then incorporated into Title 11 Subtitle A Chapter 341 of the Local Government Code. Upon incorporation into the Local Government Code, city police were divided into several different groups depending on which type of government the city operated under. Officers of a Type-A General Law Municipality retained the “like powers, duties and jurisdiction of a city Marshall”, while some others did not. In 1995, House Bill No. 2614 passed the legislature and amended Section 341.001(e) to read as follows:

(e) A police officer has:

(1) the powers, rights, duties, and jurisdiction *granted to or imposed on a peace officer by the Code of Criminal Procedure.*

(2) other powers and duties prescribed by the governing body.

It also amended section 341.021(e) to read as follows:

(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.

In the Code of Criminal Procedure Art 2.12 (3) “Who are peace officers” it states, “Marshall or police officers of an incorporated city, town or village”. This means that all

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police officers, regardless of the type of city government, are considered peace officers as long as the city is incorporated. Art 2.13 (Duties and Powers) then states "It is the duty of every peace officer to preserve the peace within his *jurisdiction*". Further "he shall arrest offenders without warrant in every case where he is authorized by law, in order that they may be taken before the proper magistrate and tried". Article 2.13 appears to be pretty cut and dried and does place specific duties on peace officers. However, the word *jurisdiction* appears again. Article 14.01 (b) states "a peace officer may arrest an offender without a warrant for any offense committed within his presence or view". This article grants peace officers the authority to arrest without a warrant but does not specify where it may be done. C.C.P. Article 14.03(d) seems to clarify this somewhat and states "A peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits an offense within his presence or view, if the offense is a felony, a violation of Title 9, Chapter 42, Penal Code, a breach of the peace, or an offense under section 49.02, Penal Code". This section appears to give all peace officers statewide jurisdiction for the specific violations listed. C.C.P. Art 14.03 (g) then becomes very specific and states "A peace officer who is listed in Subdivision (1), (2), (3), or (4), Article 2.12 is licensed under Chapter 415, Government Code, and is outside of the officer's jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, except that an officer who is outside the officer's jurisdiction may arrest a person for a violation of the Uniform Act regulating Traffic on Highways (Article 6701d, Texas Civil Statutes) only if the officer is listed in subdivision (4), Article 2.12". This section grants peace officers of a Type A General Law Municipality statewide jurisdiction for any offense committed within their presence or view, with the exception of traffic offenses, since they are listed in Subdivision (3), Article 2.12.

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The Local Government Code, Section 42.021, grants cities the right of Extraterritorial Jurisdiction. Section 42.001 (LGC) defines the purpose of Extraterritorial Jurisdiction and states “The legislature declares it the policy of the state to designate certain areas as the Extraterritorial Jurisdiction of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to municipalities”. Section 41.001 (L.G.C.) requires that a city prepare a map showing both the boundaries of the city and also its extraterritorial jurisdiction. The Local Government Code also grants cities the authority to enforce city ordinances relating to health and safety within 5000 feet of the boundaries of the city. Sec. 2303.004, Sec 2310.002. The jurisdiction of the Municipal Court has been interpreted to include violations of city ordinances that occur outside the city limits but within 5000 feet if the Municipal Court is a court of record. Opinion No. JC-0025 (Texas Attorney General)..

The Local Government Code Sec. 362.002(b) grants cities the right to enter into agreements with a contiguous county or municipality to cooperate in criminal investigations and to provide law enforcement. The agreement must clearly define the additional duties and powers granted to each department contained in the agreement.

Review of Literature or Practice

In 1988 Gerald S. Reamey and J. Daniel Harkins published *Warrantless Arrest Jurisdiction in Texas: An Analysis and a Proposal*. The authors explored existing statutes in the Local Government Code, Penal Code and Code of Criminal Procedure. They also researched Supreme Court Decisions and decisions of the Court of Criminal Appeals. Reamey, in his opening paragraph states that,

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“although the Texas Code of Criminal Procedure purports to define who is a peace officer and the scope of his duties, significant ambiguity exists regarding a peace officer’s jurisdiction. This confusion is largely due to imprecise statutory language, varying judicial interpretations and numerous overlapping, and sometimes conflicting statutes”(858,859).

A comparison of Texas Codes lends the same conclusion. The authors then explored in detail the various statutes where a peace officer is granted arrest powers and contrasted the language in each, paying particular attention to when a peace officer was restricted to making an arrest “ within his jurisdiction”. Supreme court decisions were then discussed as were the courts opinion as to peace officers being restricted to their own “ bailiwick”, Weeks V. State (1937), under common law. Reamey then stated that the courts then interpreted the statutes concerning a peace officer of a Type-A General Law Municipality as granting him county-wide jurisdiction. The authors of this article concluded that

“ A city police officer of a Type-A General Law Municipality may execute a warrantless arrest in the following areas outside the municipal boundaries for the types of offenses indicated:

- (a) “on-view” felonies - statewide jurisdiction,
- (b) “on-view” misdemeanors which breach the public peace - statewide jurisdiction
- (c) “on-view” misdemeanor violations of Title 9, Chapter 42 of the Texas Penal Code, (Disorderly Conduct and Related Offenses) - statewide jurisdiction
- (d) theft offenses (misdemeanor or felony- need not be “on-view”) statewide jurisdiction
- (e) all “on-view” offenses in which “hot pursuit” begins within the municipal boundaries and capture and arrest occurs outside those boundaries - potential statewide jurisdiction

In all other cases, a city police officer’s warrantless arrest authority is apparently confined to the county in which the employing municipality is located “(893,894).

In the conclusion of the article the authors both recommended that the legislature take action to amend the language of the statutes and to clarify just what jurisdiction means.

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Gary Garrett, a former officer with the Stratford Police Department, comments that the Stratford Police Department has been actively involved in enforcement within their extraterritorial jurisdiction for approximately five years (Garrett, G, personal communication, 1 June, 1999). He stated that all traffic and minor criminal cases within the extraterritorial jurisdiction are presented to the Justice Court for prosecution. Stratford City Counsel did research the municipal court's jurisdiction and did find that the court had jurisdiction only "within the incorporated limits".

Sgt. Eberhardt of the Stinnett Police Department notes that their department currently enforces all state laws, including traffic, and city ordinances within the ½ mile radius of the city defined by statute as the "extraterritorial jurisdiction" of their city (Eberhardt, A. personal communication, 8 August, 1999). The City of Stinnett's authority to exorcize police powers within the extraterritorial jurisdiction comes from recent changes to the statutes that grant a city the authority to enforce "all laws of the state and municipal ordinances" within their extraterritorial jurisdiction. Sgt. Eberhardt advised of a 1995 Supreme Court Decision that supports this view, however, he was unable to give any further information and the citation has not been located. No resolution or additional ordinance was passed by the Stinnett City Counsel, and the Stinnett Police Department does operate within the extraterritorial jurisdiction. Since the Stinnett Police Department began enforcement in the extraterritorial jurisdiction, all traffic cases have been presented to the Stinnett Municipal Court for prosecution (Hooks, R. personal communication, 2 September, 1999). Hooks stated that Stinnett Police Department requested to begin the enforcement within their extraterritorial jurisdiction due to

numerous violations for drug and traffic offenses occurring just outside the city limits and a lack of enforcement from the Sheriff's department and DPS.

The Panhandle Regional Task Force is currently operating under an inter-local agreement in the top 26 counties of the Texas panhandle. This agreement has been in place for several years and has been very effective in providing narcotics enforcement to the panhandle area.

Therefore, research on the practices of other Texas law enforcement agencies is consistent with the findings published by Reamey and Harkins (1988), with the exception of the latest changes to the wording in the Local Government code and the Code of Criminal Procedure. These changes have definitely expanded the warrantless arrest powers of peace officers in Texas..

Discussion of Relevant Issues:

What are the key issues? First of all does a police officer of a Type-A General Law Municipality have the authority to enforce the law outside the limits of the city employing him? According to Art.14.03 (g) of the Code of Criminal Procedure he has statewide jurisdiction for any offense committed within his presence or view with the exception of traffic offenses. These he may only enforce within his "jurisdiction".

Next, what does the term "jurisdiction" actually mean? Supreme Court decisions have gone back and forth as to what "jurisdiction" actually means. The earliest decisions stated that it meant where a police officer may exercise police powers (*Newborn V. Durham* (1895), and later decisions stated that it meant " what he could do, not where he could do it "(*Weeks V. State* (1937)). The State Legislature did state that the words used in the statutes

would be given their common meaning (V.T.C.S. Government Code 312.002(a)(Supp 1986)..

As regards traffic enforcement, Article 14.03(g) of the Code of Criminal Procedure specifically denies peace officers of a Type-A General Law Municipality the authority to enforce traffic violations outside their jurisdiction.

Does the jurisdiction of a peace officer of a Type-A General Law Municipality include the area that is considered the "extraterritorial jurisdiction" of the city? The Local Government Code Section 42.001 states that the purpose of extraterritorial jurisdiction is so that cities may provide for the "health, safety and welfare of citizens living in and adjacent to municipalities". The final question is whether this statute implies that city police are responsible for the safety of citizens living adjacent to their city, and if so, what statute grants them the authority to provide citizen safety.

Currently officers of the Fritch Police Department observe traffic violations on a daily basis along this particular stretch of roadway. A dangerous section of road next to Fritch elementary school is wide open and it's only a matter of time before one of the children is going to be run over on the roadway. Traffic in and out of the National Recreation Area is heavy all summer long and drunk drivers and under age drinkers are constantly travelling this roadway. The Moore County Sheriff's Department is located in Dumas, which is thirty five miles away on the other side of the lake. When an accident occurs on their portion of the roadway Fritch Police Department must respond and stand by. It's generally about an hour before a deputy or Moore County DPS can arrive. A portion of the roadway is in Hutchinson County, and their office is located in Borger which is only twelve miles away. However, they generally only have two and maybe three deputies

working the field to cover eight hundred square miles. Any calls on their section of the roadway generally mean about a thirty minute standby. Hutchinson County does have four DPS troopers in the county, when they are at full strength. However, they seldom come to the Fritch area due to the major highways running through the Borger area. A wait for a DPS trooper is generally twenty to thirty minutes.

The City of Fritch currently provides police service to a portion of the residents living along the roadway and Fritch Police Department officers travel the roadway several times a day. Enforcement of the state traffic laws would be an easy thing to accomplish if the authority were there. Several accidents and potential fatalities could be avoided if traffic enforcement were in place and the citizens were slowed down along this stretch of roadway. The City of Fritch would benefit due to increased revenues from the fines collected and the citizens would be receiving a higher level of service.

Conclusion / Recommendations:

The purpose of this research project was to clearly define where a police officer of a Type-A General Municipality has territorial jurisdiction. This issue is relevant due to violations occurring on a daily basis within a few feet of the incorporated city limits of Fritch. A traffic problem has been identified as has a lack of service being provided to citizens in the community.

The state legislature in recent years has clarified peace officer's jurisdiction in the area of criminal activity and that jurisdiction is now state-wide for any offense committed within their presence or view. In the area of traffic enforcement, a peace officer of a Type-A General Law Municipality is limited to enforcement within their jurisdiction. Supreme Court

Decisions since 1983 have agreed that city police have county-wide jurisdiction due to the wording of the Local Government Code. Changes to the wording of sections of that code during the 74th Legislature (1995) now leave this area open for interpretation again. If a police department can consider a city's extraterritorial jurisdiction as their jurisdiction also, then the problem is solved: however, additional research is ongoing in this area. Inter-local Cooperation agreements are authorized by the Local Government Code and these may be implemented between agencies at any time for the purpose of providing services

It is recommended that the City of Fritch actively pursue an inter-local agreement with Moore County and Hutchinson County Sheriff's Departments. This agreement would allow officers to provide the needed services and enforcement in cooperation with both these departments. It is further recommended that the city continue to research its extraterritorial jurisdiction and its rights to enforcement in this area. Finally, the City of Fritch should consider annexation of this particular roadway into the city limits. This step alone would help to head off a potential disaster.

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