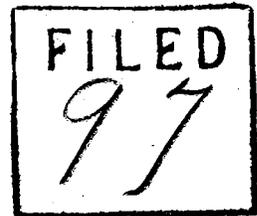


CRIMINAL LAW: Civil courts of this state have jurisdiction to try military personnel for offenses against the civil laws of Missouri.



October 2, 1945

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Mr. Hugh P. Williamson
Prosecuting Attorney
Callaway County
Fulton, Missouri

Dear Sir:

We are in receipt of your request for an opinion, dated September 29, 1945, in which you state that you desire to prosecute a member of the Armed Forces of the United States in the Circuit Court of Callaway County for the offense of stealing a motor vehicle. Accompanying your request is a copy of a telegram from the Bureau of Naval Personnel in Washington, D. C., advising that the return of this individual to naval custody is not desired until charges pending against him in the civil courts are fully disposed of. You desire our opinion as to whether the civil courts would have jurisdiction of an offense against the civil laws of this state committed by a member of the Armed Forces.

A search of Title 34 of the United States Code of Laws, which pertains to the organization and government of the United States Navy, fails to reveal any statute covering this situation, and there appear to be no cases decided involving a member of the Navy.

We find a case involving a soldier of the United States Army, which we believe to be in point. In time of peace, commanding officers of the United States Army are required to deliver offenders against the civil laws to civil authorities for trial, by Section 1546, Title 10, United States Code of Laws. However, in time of war, this section is inoperative and members of the United States Army are in the same situation as those of the Navy, that is, there is no statutory provision covering the situation at hand.

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In *Caldwell v. Parker*, 252 U. S. 376, 64 L. Ed. 621, the appellant, a soldier in the Army of the United States, serving in Alabama, was tried and convicted of the murder of a civilian within the state of Alabama and not within the confines of any military reservation. The conviction was affirmed by the Supreme Court of Alabama, and appellant sought to reverse the action below on the ground that the state court had no jurisdiction of the person of appellant, as that power was exclusively vested in a court-martial, since he was a member of the Armed Forces. There had been no demand made by military authorities for the return of appellant prior to his sentence, and the telegram submitted by you with your request clearly indicates that the United States Navy has no intention of demanding custody of the accused until the charges against him are completely disposed of.

After considering Section 1546, Title 10, United States Code of Laws, referred to above, the opinion in *Caldwell v. Parker*, supra, states, l. c. 624 (L. ed.):

"Comprehensively considering these provisions, it is apparent that they contain no direct and clear expression of a purpose on the part of Congress, conceding, for the sake of the argument, that authority existed under the Constitution to do so, to bring about, as the mere result of a declaration of war, the complete destruction of state authority and the extraordinary extension of military power upon which the argument rests. This alone might be sufficient to dispose of the subject, for, as said in *Coleman v. Tennessee*, 97 U. S. 509, 514, 24 L. ed. 1118, 1121: 'With the known hostility of the American people to any interference by the military with the regular administration of justice in the civil courts, no such intention should be ascribed to Congress in the absence of clear and direct language to that effect.' Certainly, it cannot be assumed that the mere existence of a state of war begot of necessity the military power asserted, since the Articles of War, originally adopted in 1775, were, as we have

seen, in the very midst of the War for Independence, modified in 1776 to make certain the preservation of the civil power.

* * * * *

" * * * We say this because even though it be conceded that the purpose of Congress by the Article of 1916, departing from everything which had gone before, was to give to military courts, as the mere result of a state of war, the power to punish as military offenses the crimes specified when committed by those in the military service, such admission is here negligible because, in that view, the regulations relied upon would do no more than extend the military authority, because of a state of war, to the punishment, as military crimes, of acts criminal under the state law, without the slightest indication of purpose to exclude the jurisdiction of state courts to deal with such acts as offenses against the state law.

* * * * *

"It follows, therefore, that the contention as to the enlargement of military power, as the mere result of a state of war, and the consequent complete destruction of state authority, are without merit, and that the court was right in so deciding and hence its judgment must be and it is affirmed."

The general rule is found in 6 C. J. S., page 425, Section 38, and is stated as follows:

" * * * The articles of war do not deprive the civil courts, either in time of peace or war, of the concurrent jurisdiction previously vested in them over crimes against either federal or state laws committed within the geographical limits of

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the United States and the District of
Columbia by persons subject to military
law, * * *."

If a waiver from the United States Navy should be necessary in the case presented, we believe that the enclosure with your opinion request from the Bureau of Naval Personnel is sufficient. There is not available to us at the present time a copy of Navy Regulations, but we have been advised by the local office of the United States Navy, and it is a matter of common knowledge, that the Bureau of Naval Personnel has complete power over the assignment and release of naval personnel.

CONCLUSION

It is, therefore, our opinion that the civil court in this state having jurisdiction of the offense described by you has jurisdiction and may proceed with the trial of a member of the Armed Forces under the circumstances set out in your request.

Respectfully submitted,

ROBERT L. HYDER
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RLH:HR