

OPINION NO. 449 (1963)
No. 27 (1964)

(Answered by Letter - Stevens)

June 24, 1964



Honorable Lawrence F. Gepford
Prosecuting Attorney
Jackson County
Independence, Missouri

Dear Mr. Gepford:

This is in reply to your opinion request of November 1, 1963, regarding the newly enacted, "driving while intoxicated" statute, namely 564.440, V.A.M.S., 1963, in which you ask the following:

"Is the uniform traffic ticket sufficient to serve as both a complaint and information? If not, is it the opinion of your office that the uniform traffic ticket is legally sufficient to serve as a complaint only, with a separate information being filed, or should both complaint and information be filed as in other misdemeanor cases?"

Section 564.440, V.A.M.S., 1963, states that a person operating a motor vehicle in an intoxicated condition shall be guilty of a misdemeanor upon conviction for the first two violations with different punishments for each of such convictions. For the third and all subsequent violations, he shall be guilty of a felony.

(We assume you are inquiring only regarding the use of the uniform traffic ticket when the violation constitutes a misdemeanor.)

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In promulgating Chapter 37 on Rules for Traffic Courts, it was no doubt the intention of the Supreme Court to have the "Uniform Traffic Ticket" serve not only as a summons, but also as a complaint and an information, see Supreme Court Rule 37.46, amended 1963. It is noted that the forms of the Uniform Traffic Ticket, as set out in Rule 37.1162 are entitled, "Suggested Forms". Further, Rule 37.466 specifically states that a "more detailed" information may be filed. This is an indication by the court that the Prosecuting Attorney may file an information at his option.

Rule 37.18 requires that "the information or complaint shall be plain, concise and definite."

The question presented is: Can the forms as filled out by the arresting officer at the scene be amended and be used as a complaint and information charging the crime of driving while intoxicated under Section 564.440.

The short answer is - yes, and where possible, it may be desirable.

We believe, however, that such use may not always be practical for the following reasons: (1) The officer making the arrest might not be informed as to previous convictions, thus necessitating an amended complaint or information, if needed; and (2) Because there is not sufficient space to add information making them complete, such as the endorsement of the State's witnesses as required under Supreme Court Rule 27.17; also, there is not sufficient space to properly describe the offense, nor is there sufficient space for the required jurat. We suggest, however, that tickets could be so prepared and printed following the suggested form, so that adequate space could be provided to fully comply with all rule requirements.

In the case of *City of Raytown v. Roach*, 360 S.W. 2d 741, the defendant was charged with a violation of a city ordinance. The complaint was filed on the form designated "Missouri Uniform Traffic Ticket", which is practically identical to the one discussed here. The court did not criticize the use of this form, but it did state that the information or complaint must contain a definite statement of the facts constituting the offense charged.

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The information or complaint must contain an allegation that the accused drove a motor vehicle on a public road while in an intoxicated condition at a certain time and place. The "Traffic Ticket" form should be amended so as to accomplish this. Supreme Court Rule 24.01 states that an information shall contain a plain, concise and definite written statement of the essential facts. It is possible to use the original ticket as a complaint when properly executed by the officer in a misdemeanor case, and also in traffic courts or municipal courts. However, it would be cumbersome to use these forms in a magistrate court and in felony cases because of the lack of space provided in the tickets as now printed.

It is our belief that the use of these forms may result in some confusion, and that the better practice would be for the prosecutor to redraft complaints and informations based on the facts taken from these tickets, or in the alternative, ticket forms should be so prepared and printed to provide adequate space for compliance with the rules of court.

We trust this is the information that you desire, and if we can be of further help to you, do not hesitate to call on us.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

OHS/fh