

ANSWER BY LETTER: ASHBY

October 14, 1969

OPINION LETTER NO. 423

Honorable R. Jay Ingraham  
Secretary-Attorney  
Board of Police Commissioners  
1125 Locust Street  
Kansas City, Missouri 64106

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Dear Mr. Ingraham:

This letter considers your question whether the police of Kansas City can hold an individual more than twenty (20) hours without a warrant if the police require that he furnish a bond guaranteeing his appearance (and he fails to make such bond).

Supreme Court Rule 21.14 reads, in pertinent parts as follows:

"All persons arrested and held in custody by any peace officer, without warrant, for the alleged commission of a criminal offense, or on suspicion thereof, shall be discharged from such custody within twenty hours from the time of arrest, unless they be held upon a warrant issued subsequent to such arrest. . . . If the offense for which such person is held in custody is bailable and the person held so requests, he shall be entitled to be admitted to bail in an amount deemed sufficient by a judge or magistrate of a court of such county or of the City of St. Louis having original jurisdiction to try criminal offenses. Such admission to bail shall be governed by

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all applicable provisions of these Rules. The condition of the bail bond shall be that the person so admitted to bail will appear at a time and place stipulated therein (which shall be a court having appropriate jurisdiction) and from time to time as required by the court in which such bond is returnable, to answer to a complaint, indictment or information charging such offense as may be preferred against him. (Amended April 15, 1958, effective Dec. 1, 1958.)"

The question may be simply put in this fashion, i.e., can the offer of a recognizance by the police be equated to the mandate of the Supreme Court Criminal Rule 21.14, that an accused "shall be discharged from such custody within twenty hours from the time of the arrest unless they be held upon a warrant issued subsequent to the arrest"?

We think not and, therefore, answer your question in the negative.

We have previously ruled on this question in our Opinion No. 59, dated March 1, 1954, to the Honorable Roy W. McGhee, Jr., which is attached. We reaffirm that ruling and again hold that a person arrested, without warrant, may not be held beyond the twenty (20) hour period unless charges are preferred against him by a person competent to testify against the accused and a warrant issued. If the twenty (20) hour period expires on Sunday, a magistrate may entertain a charge filed by a person competent to testify against the accused and issue such warrant.

The fact that the accused may have been offered a recognizance by the police cannot be equated to the requirement of statute and Supreme Court Criminal Rule 21.14 that an accused "shall be discharged from said custody \* \* \* unless they shall be charged with a criminal offense by oath of some credible person, and be held by warrant to answer to such offense."

If you have further questions on this matter, please feel free to submit them to me.

Yours very truly,

JOHN C. DANFORTH  
Attorney General

Enclosure:

OP.NO. 59, 3/1/54, McGhee