

BAIL: An arresting officer who has no authority to
POLICE OFFICER: accept bail is not authorized to accept a
544.045, RSMo Supp. 1967, from a person arrested for a traffic
violation. driver's license in lieu of bail under Section

OPINION NO. 366

June 8, 1970

Honorable Patrick J. Hickey
State Representative
4508 St. Leo Lane
St. Ann, Missouri 63074

Honorable Russell Goward
State Representative
4210 A Holly
St. Louis, Missouri 63115



Gentlemen:

This opinion is issued in response to your requests for a ruling concerning the validity of the procedure allegedly presently being followed by the police department of the City of St. Louis pursuant to Section 544.045, RSMo Supp. 1967, which relates to the depositing of drivers' licenses in lieu of bail when persons are arrested and charged with certain traffic violations.

You state that at the present time the police officers of the City of St. Louis upon issuing a summons for a violation of certain traffic ordinances or certain traffic laws require that the person involved surrender his operator's license.

Section 544.045 states in full as follows:

"Any person arrested and charged with violating a traffic law of this state or a traffic ordinance of any county, city, town or village may, at the discretion of the officer authorized by law or rule of court to accept bail, deposit his chauffeur's or operator's license issued by this state with the office demanding bail in lieu of any other security for his appearance in court to answer any such charge, except when the charge is for driving while intoxicated, driving while under the influence of intoxicating liquor or drugs, leaving the scene of

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a motor vehicle accident, driving when his license is suspended or revoked, or for any charge made because of a motor vehicle accident in which a death has occurred.

"2. The judge, court clerk or other officer requiring security for an appearance shall accept the deposit of the license in lieu of bail and, if the license is accepted, shall issue a receipt to the licensee for the license upon a form approved by the director of revenue. The licensee may, until he has appeared at the proper time and place as stated in the receipt to answer the charge placed against him, operate motor vehicles while in possession of the receipt, and the receipt shall be accepted in lieu of the license as provided by section 302.181, RSMo. If a continuance is requested and granted, the licensee shall be given a new receipt for his license.

"3. If the driver fails to appear at the proper time to answer the charge placed against him, the clerk of the court, or the judge of the court if there is no clerk, shall within ten days notify the director of revenue of the failure to appear, and the director shall thereafter withhold any renewal of the license or the issuance of a duplicate license to the licensee until notified by the court that the charge has been reduced to final judgment."
(Emphasis added)

The statute relative to the police officer authorized to accept bail in the City of St. Louis is Section 84.230, RSMo 1959. This section states in part as follows:

"The Commissioners of police shall cause all persons arrested by the police to be brought before some proper magistrate within said cities, to be dealt with according to law. Proper police officers in charge of police station houses may, if the offense charged against any person is a bailable one, at the request of such person, take from him a recognizance in such sum as may seem to be sufficient and proper with sufficient sureties for his appearance at the proper time before some proper magistrate; . . . "

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There does not appear to be any rule of court within the meaning of the provisions of Section 544.045, nor does it appear that there is any statutory authorization for an arresting officer to accept bail.

We are of the opinion that it is clear that a person who is arrested for certain traffic violations has the initial option to determine whether or not he will surrender his license in lieu of bail. This determination is subject to the acceptance of the license by and at the discretion of the officer authorized by law or rule of court to accept bail. If the arrested person consents to depositing his license in lieu of bail with the approval of the officer authorized by law or rule of court to accept bail, he is then issued a receipt for his license upon a form approved by the director of revenue, by the judge, court clerk, or other officer requiring security for an appearance. The arresting officer is not authorized by law or rule of court to accept bail; and insofar as the City of St. Louis is concerned, the only police officer authorized to accept bail under these circumstances is the proper police officer in charge of a police station house pursuant to Section 84.230.

With respect to the procedure now allegedly followed in the City of St. Louis; i.e., acceptance of the deposit of a driver's license in lieu of bail by an arresting police officer, we conclude that such procedure is improper and in conflict with provisions of Section 544.045

CONCLUSION

It is the opinion of this office that an arresting officer who has no authority to accept bail is not authorized to accept a driver's license in lieu of bail under Section 544.045, RSMo Supp. 1967, from a person arrested for a traffic violation.

The foregoing opinion, which I hereby approve, was prepared by my assistant John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General