

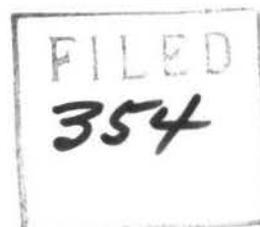
SUNSHINE BILL:
CRIMINAL PROCEDURE:
CRIMINAL LAW:
ARREST:

When a person is arrested and charged with an offense within thirty days of the arrest but the case is nolle prossed, official records pertaining to the case, including records of

the arrest, are to be closed but are not subject to expungement.

OPINION NO. 354

December 13, 1973



Honorable Kenneth J. Rothman
State Representative, District 77
Room 309 State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Rothman:

This official opinion is issued in response to your request for a ruling on the following question:

"What effect would the provisions of Act 172 of the 77th General Assembly have in situations where the circuit attorney's office issues a memorandum of nolle prosequi for various reasons and then after one years time issues a warrant on the same charge? Is the record of the first arrest automatically expunged after one years period of time?"

The statute in question, C.C.S.S.B. No. 1, 77th General Assembly (1973), reads, in pertinent part, as follows:

"Section 6. If any person is arrested and not charged with an offense against the law within thirty days of his arrest, all records of the arrest and of any detention or confinement incident thereto shall thereafter be closed records to all persons except the person arrested. If there is no conviction within one year after the records are closed, all records of the arrest and of any detention or confinement incident thereto shall be expunged in any city or county having a population of five hundred thousand or more.

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"Section 7. If the person arrested is charged but the case is subsequently nolle prossed, dismissed or the accused is found not guilty in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records to all persons except the person arrested or charged."

We assume that your question refers to a situation in which the arrested person has been charged with an offense within thirty days of his arrest, so that his records have not been closed under the terms of the first sentence of Section 6 of C.C.S.S.B. No. 1.

Initially, we point out that the second sentence of Section 6 of the Act, relating to the expungement of records, applies only to the records of arrests which take place within the geographical confines of any city or county having a population of five hundred thousand or more. However, the first sentence of Section 6 and the provisions of Section 7, which relate to the closing of records, apply throughout the State of Missouri. See our Opinion No. 321, issued December 10, 1973, to Colonel Samuel S. Smith, a copy of which is attached hereto.

The crucial aspect of your question is the relationship between Section 7 and the expungement provisions of Section 6. The second sentence of Section 6 provides for expungement, in any city or county having a population of five hundred thousand or more, "if there is no conviction within one year after the records are closed." We must analyze whether the word "closed", in this context, refers to the closing of records which takes place under Section 7, or only to the closing which takes place under the provisions of the first sentence of Section 6.

We do not believe that records which have been closed under Section 7 are subject to expungement under Section 6. We note that the records which are subject to expungement are "all records of the arrest and of any detention or confinement incident thereto." That language is identical to the description of the records which are subject to closing under the provisions of the first sentence of Section 6. But, in Section 7, the records to be closed include "official records pertaining to the case," which, in our Opinion No. 311, issued November 30, 1973, to Ralph L. Martin, we indicated to be a more comprehensive category of records than "records of the arrest and of any detention or confinement incident thereto." (We enclose a copy of Opinion No. 311.) In other words, even if some of the records closed under Section 7 were subject to expungement, others would not be.

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In Graves v. Little Tarkio Drainage Dist. No. 1, 134 S.W.2d 70, 78 (Mo. 1939), it was stated that:

" . . . ' . . . a statute should be so construed that effect may be given to all of its provisions, so that no part, or section, will be inoperative, superfluous, contradictory, or conflicting, and so that one section, or part, will not destroy another. Sutherland on Statutory Construction (2d Ed.) 731, 732, § 380. . . . '"

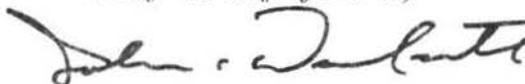
It would be superfluous and contradictory to require the expungement of some records closed under Section 7 (those relating to the arrest and any detention or confinement incident thereto) but not to require expungement of others (any other records pertaining to the case). The protection afforded by expungement would then be useless, and we do not presume that the legislature intended such a result.

CONCLUSION

Therefore, it is the opinion of this office that, when a person is arrested and charged with an offense within thirty days of the arrest but the case is nolle prossed, official records pertaining to the case, including records of the arrest, are to be closed but are not subject to expungement.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 321
12/10/73, Smith

Op. No. 311
11/30/73, Martin