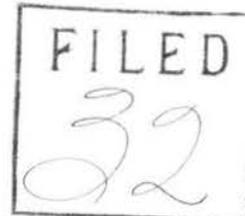


Relating to Construction of Section 3952 R. S.
1929 and Officer's Rights Thereunder.

September 26, 1933

10-2



Mr. Joseph A. Gerk,
Chief of Police,
1200 Clark Avenue,
St. Louis, Missouri

Dear Sir:

Receipt of your letter, dated September 12, 1933,
is acknowledged, in which you state and inquire as follows:

"I am taking the liberty of requesting an opinion from you as to the rights and privileges of the St. Louis Police Department under Section 3952 of the Revised Statutes of Missouri, 1929, commonly referred to as the hold-over law.

A little explanation of my motive in requesting the opinion may not be amiss. This department frequently takes into custody persons who are dangerous menaces to society. Almost before the crooks are lodged in cells and before we can complete our investigation, their attorney appears with bonds for their release. The attorney seeks to intimidate police officials with whom he may come in contact and threatens them with dire punishment unless his clients are forthwith given their liberty.

This happened the other night when two suspected bombers, potential murderers, were brought in. Bonds were immediately presented for them, copies of which I inclose for your information. The officers in charge were more or less influenced by the attorney's insistent and vehement demands and released the suspects on these bonds. My impression is that under the hold-over law the police are entitled to twenty hours in which to question

and investigate suspects and that within those twenty hours they are justified in refusing to accept bonds for their release.

I shall appreciate your courtesy in setting me right upon this subject so that a precedent may be had for the future guidance of police officials under similar conditions."

Section 3952, Revised Statute Missouri, 1929, reads:

"All persons arrested and confined in any jail, calaboose or other place of confinement by any peace officer, without warrant or other process, for any alleged breach of the peace or other criminal offense, or on suspicion thereof, shall be discharged from said custody within twenty hours from the time of such arrest, unless they shall be charged with a criminal offense by the oath of some credible person, and be held by warrant to answer to such offense; and every such person shall, while so confined, be permitted at all reasonable hours during the day to consult with counsel or other persons in his behalf; and any person or officer who shall violate the provisions of this section, by refusing to release any person who shall be entitled to such release, or by refusing to permit him to see and consult with counsel or other persons, or who shall transfer any such prisoner to the custody or control of another, or to another place, or prefer against such person a false charge, with intent to avoid the provisions of this section, shall be deemed guilty of a misdemeanor."

In State ex rel Kaiser v. Miller, 316 Mo. 1. c. 382, the court in part said:

" Under the provisions of section 3200, Revised Statutes 1919 (now 3952 R. S. 1929) the person arrested by a peace officer without warrant on suspicion of having committed a criminal offense, is required to be discharged from such custody within twenty hours, unless he shall be charged with a criminal offense by the oath of a credible person, and be held by a warrant to answer for such offense. The jurisdiction of the magistrate over such person accrues by the concurrence of a complaint made as provided by law and the custody of the person complained against. The jurisdiction

of the magistrate over money or property taken by the officer in respect thereto, arises upon the concurrent facts that a criminal cause has been instituted before the magistrate and that the party charged has been taken into custody."

We say that the above opinion holds in effect that no court has jurisdiction over such officers making arrests until the arising of concurrent facts as follows:

First, that a criminal case has been instituted by the filing of an affidavit by some credible person charging the person arrested with a crime.

Second, that the party charged has been taken into custody within the twenty hours designated in section 395, supra. We therefore hold the arresting officers have twenty hours within which to investigate the person arrested, before either releasing said person or filing charges, and that he is not entitled to bail until charges are filed, which must be done within the period of twenty hours after his detention or his release effected.

Yours very truly,

W. W. Barnes

Assistant Attorney General

APPROVED

Attorney General.