REFORMATORY, MISSOURI: Authority of officer of institution to carry arms while attempting to arrest escaped person.

4029 R S Mo 1929

June 15, 1933. 6-20

FILED
34
28

Mr. Harve G. Gray
Superintendent
Missouri Training School for Boys
Boonville, Missouri

Dear Mr. Gray:

This department is in receipt of your letter of June 6th, with request for an opinion, which letter of request is as follows:

> "It has been our custom, when a boy escapes from this Institution, to permit the officers of the Institution to carry arms while they are out in the attempt to capture said boy, in as much as we never know what shape we will find the boy in.
>
> I would appreciate it very much if you will write me a letter or permission of some kind, whatever may be required, that the officers will be legally entitled to carry arms when on such duty."

Section 4029 R. S. 1929, under "Crimes and Punishments", provides as follows:

> "CARRYING CONCEALED WEAPONS.--If any person shall carry concealed upon or about his person a dangerous or deadly weapon of any kind or description, or shall go into any church or place where people have assembled for religious worship, or into any school room or place where people are assembled for educational, political, literary or social purposes, or to any election precinct on any election day, or into any court room during the sitting of court, or into any other public assemblage of persons met for any lawful purpose other than for militia drill, or

meetings called under militia law of this state, having upon or about his person, concealed or exposed, any kind of firearms, bowie knife, spring-back knife, razor, metal knucks, billy, sword cane, dirk, dagger, slungshot or other similar deadly weapons, or shall, in the presence of one or more persons, exhibit any such weapon in a rude, angry or threatening manner, or shall have any such weapon in his possession when intoxicated, or, directly or indirectly, sell or deliver, loan or barter to any minor any such weapon, without the consent of the parent or guardian of such minor, he shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding two years, or by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than fifty days nor more than one year, or by both such fine and imprisonment: Provided, that nothing contained in this section shall apply to legally qualified sheriffs, police officers and other persons whose bona fide duty is to execute process, civil or criminal, make arrests, or aid in conserving the public peace, nor to persons traveling in a continuous journey peaceably through this state."

Section 8355 R. S. 1929, Chap. 44, Art. II, under "The Missouri Reformatory", provides as follows:

"It shall be the duty of every sheriff, deputy sheriff, constable or marshal, and every officer and employe of such reformatory, to arrest, with or without warrant, any person who shall have escaped from such institution and return him thereto, and such officer, except officers and employes of the institution, shall receive such compensation as shall be allowed by law for like services rendered and shall be paid out of any fund in the treasury of such institution not especially appropriated."

Under 40 Cyc. p. 857, it is stated,

"An exception of peace officers from the application of a statute prohibiting the carrying of weapons includes the county judge who is a conservator of the peace by constitutional

> provision, as well as persons specially deputized or appointed to make an arrest or preserve order, and persons specially summoned to aid in executing a search warrant or a warrant of arrest, although the exception operates in favor of these latter cases of persons only during the limited time and for the particular purposes for which they may be and are appointed."

It is, therefore, our opinion that the officer and employee mentioned in Section 8355, supra, who has the authority "to arrest, with or without warrant, any person who shall have escaped from such institution and return him thereto," comes within the proviso of Section 4029 R. S. 1929, when on the mission of arresting or attempting to arrest a person who has escaped from said institution, and therefore is legally entitled to carry arms when on such duty. Of course, we do not intend to convey the idea that the officer or employee of your institution has this authority beyond the borders of this State.

Yours very truly,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED: _____
ROY McKITTRICK
Attorney-General.

CRH:EG