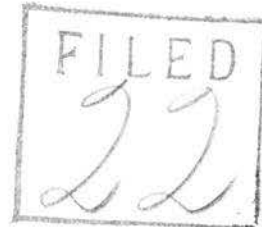


RELATING TO POWERS OF MEMBERS OF STATE PATROL:  
(1) HAVE POWER TO ARREST WITHOUT WARRANT WHEN,  
(2) IF PERSON IN CUSTODY NO WARRANT SHALL ISSUE.

September 24th, 1934



Mr. A. F. Downs  
Justice of the Peace  
Marshall, Missouri

Dear Sir:

We acknowledge your letter of September 11th, in which you state and inquire as follows:

"I would like to have an opinion from your office on the following question.

I am a Justice of the Peace of Marshall Township, in Saline County. Quite frequently persons are arrested by members of the State Highway Patrol for law violations and brought before me as Justice of the Peace. It is my contention that when a person violates the law in the presence of a Highway Patrolman, and is arrested by the patrolman at that time and brought before me, that there is no need of me issuing a warrant for the arrest of that person and that the law does not require that I issue a warrant. My idea of a capias or a State warrant is that they amount to a command to some peace officer to apprehend the party named in the warrant and bring them before the Justice issuing the same. If the party to be arrested has already been arrested and brought before the Justice of the Peace I can see no reason for then issuing a warrant for the arrest.

Some of the officers of my court contend that it is necessary that I issue a warrant for the arrest of a person who has already been brought before me and I would like to have a letter from your office which will settle this question."

I.

Members of State Highway Patrol  
have authority to arrest without writ,  
rule, order or process, any person  
detected in the act of violating  
any law of the state.

Section 13 Laws of Missouri, 1931, page  
234, provides as follows:

"The members of the patrol are hereby declared to be officers of the state of Missouri and shall be so deemed and taken in all courts having jurisdiction of offense against the laws of this state. The members of the patrol shall have the powers now or hereafter vested by law in peace officers except the serving or execution of civil process. The members of the patrol shall have authority to arrest without writ, rule, order or process any person detected by him in the act of violating any law of the state. When a member of the patrol is in pursuit of a violator or suspected violator and is unable to arrest such violator or suspected violator within the limits of the district or territory over which the jurisdiction of such member of the patrol extends, he shall be and is hereby authorized to continue in pursuit of such violator or suspected violator into whatever part of this state may be reasonably necessary to effect the apprehension and arrest of the same and to arrest such violator or suspected violator wherever he may be overtaken."

It appears from the provisions of section 13 (Supra), that no warrant, writ, order or process is necessary in order for a member of the State Highway Patrol to make arrest of all persons detected by him in the act of violating any law of the State.

Therefore this department interprets said section to authorize State Highway Patrol members to arrest all persons detected by them in the act of violating any law of the State.

II.

No warrant is necessary if the person charged be in custody or voluntarily surrender himself in custody of the court.

Section 3511 Revised Statutes of Missouri, 1929, provides in part as follows:

"Upon the filing of the information, a warrant shall issue for the apprehension of the person charged with the offense, unless he be in custody or voluntarily surrender himself in custody of the court;...."

It appears from the provision of section 3511 (Supra) that no warrant shall issue in criminal cases upon the filing of the information, where the person charged is in custody or voluntarily surrenders himself in the custody of the court.

Therefore it is the opinion of this Department, where arrests are made by members of the State Highway Patrol, of persons detected by them in the act of violating any law of the State, and are forthwith taken by such member before the court or magistrate having jurisdiction of the offense, then no warrant shall be necessary.

Yours very truly,

W. W. Barnes

Asst. Attorney General

APPROVED:

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Attorney General