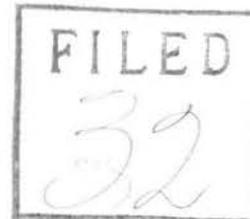


FINGERPRINTING: No liability incurred by Sheriff of Putnam County if officer used reasonable judgment, and if person under arrest was not coerced, threatened or compelled to submit to the taking of fingerprints.

1-22
January 17, 1934.



Mr. A.R. Gibson,
Sheriff of Putnam County,
Unionville, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of November 4 relative to taking fingerprints of prisoners, same being as follows:

"I have been up against it here for the reason that I have been told by the prosecuting attorney here that I am not permitted to take fingerprints of prisoners except those under conviction on felony charges.

In several cases I am sure that I could have produced conclusive evidence for conviction as I have been lifting fingerprints everywhere I am called out on a robbery, if it had been legal to do so.

I have noticed that Sheriff Bash of Kansas City was going ahead fingerprinting. I wish you would give me an opinion on this as I do not wish to get myself in a jam. You see this is a republican county, and being a Democrat they are watching every move I make, trying to catch me liable."

The statutes of Missouri are silent in regard to the taking of fingerprints or bertillon measurements except in cities having a population of five hundred thousand or more. The only statute we find dealing with the Bertillon System is Section 3794, R.S. Mo. 1929, which is as follows:

"Any person convicted of a felony, which shall not be set aside or reversed, may be subjected by or under the direction of those in whose custody he is to the measurements, processes and operations practiced under the system for the identification of criminals, commonly known as the Bertillon signaletic system. Such force may be used as necessary to the effectual carrying out and application of such measurements, processes and operations; and the signaletic card and other results thereof may be published for the purpose of affording information to officers and others engaged in the execution or administration of the law."

You will note this section only gives an officer authority to take fingerprints and bertillon measurements after a person has been convicted and the sentence affirmed.

We do not have any cases in Missouri bearing on this question. In the decision of State v. Clausmeier, 154 Indiana 599, the Court said:

"'Unless this discretion' is abused through malice, wantonness or a reckless disregard for, and a selfish indifference to the common dictates of humanity, the officer is not liable."

In the same case, the Court said with respect to taking photographs, the following:

"The duty of the police, always existing, and reaffirmed by the charter *****to preserve the public peace, prevent crime, detect and arrest offenders', gives them necessarily a wide range of incidental powers to accomplish the mandate of the statute. The existence of the so-called 'rogues' gallery, and the taking of photographs, weights and measurements,

finds its authority, if anywhere, in this provision, or in the accepted pre-existing principles of which it is the expression. So far as habitual criminals are concerned, their supervision and control, no serious question could well be raised as to the propriety or legal character of the acts involved. One of the phases of police supervision, says Professor Thiedeman, in his state and federal control of persons and property, 'is that of photographing alleged criminals and sending copies of the photographs to all the detective bureaus. If this is directed by the law as a punishment for crime of which the criminals stand convicted, or if the man is in fact a criminal, and the photograph is obtained without force or compulsion, there can be no constitutional or legal objection to the act, for no right has been violated.' The taking of photographs in such cases has authority to support it."

CONCLUSION

In the last analysis, we wish to say that if an officer used reasonable judgment, and if the person under arrest was not coerced, threatened or compelled to submit to the taking of fingerprints, it would be the opinion of this department that it would incur no liability. However, discretion should be used and official authority should not be abused.

Respectfully submitted,

OLLIVER W. NOLEN,
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APPROVED:

ROY McKITTRICK,
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