

SHERIFF: ) May file complaints on Sunday.  
          ) May not hold a prisoner more than twenty hours  
OFFICERS: ) without complaint being filed and warrant issued.

December 4, 1937.

12-8



Honorable Chas. Farrell  
Sheriff  
Oregon County  
Alton, Missouri

Dear Sir:

This is to acknowledge your letter of November 26th in which you request the opinion of this Department on what procedure you should take under the facts as set forth in your letter.

You wish to know what action you should take where arrests are made at night or on Saturday nights for offenses committed in the presence of the officer where no warrant is required, and whether the prisoner may be held until the following Monday morning without complaint being filed.

We presume that you have reference to disturbances of the peace, affrays and offenses of like character committed in the presence of the officers and those cases where the officers have a right to make arrests for those offenses. If an officer makes such arrests without a warrant he should take the prisoner before a proper magistrate to be dealt with according to law. The proper procedure in the cases in which you describe is for the officer to as soon as practicable take the prisoner before a magistrate so that he may be permitted to give bail if desired. The officer or some interested person should file a complaint before a magistrate within a reasonable time.

Under Section 3952, R. S. Mo. 1929, "All persons arrested and confined in jail, calaboose or other place of confinement by any peace officer, without warrant or other process, or 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;" This statute was enacted for the purpose of protecting the individual citizen in his rights so that one arrested and placed in jail could not be held for an unreasonable time without some person coming forward and upon oath charging the incarcerated person with the violation of a criminal statute, and the Legislature has said by the above statute that a person cannot be held in custody longer than twenty hours from the time of his arrest without being charged with a criminal offense upon the oath of some credible person.

The above section of the statute was cited in the case of State v. Miller, 289 S. W., 1. c. 903, 316 Mo. 372.

Section 1863, R. S. Mo. 1929, provides that a magistrate may exercise his jurisdiction "when it shall be necessary in criminal cases to preserve the peace or arrest the offender." on Sunday.

Section 755, R. S. Mo. 1929, provides:

"No person, on Sunday or any other day declared and established as public holiday by any statute of this State, shall serve or execute any writ, process, warrant, order or judgment, except in criminal cases, or for a breach of the peace, etc."

It is, therefore, our opinion, under the above circumstances, for the officer or some other competent person to file a complaint against the person arrested, within the statutory period so that the person arrested will not be held beyond the statutory twenty-hour period, and there is nothing in the statute to prevent this action being taken on Sunday.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General

APPROVED:

\_\_\_\_\_  
J. E. TAYLOR  
(Acting) Attorney-General