

PENAL BOARD:

Authority of law for imprisonment in penitentiary is only pursuant to sentence of court for a felony.

May 16, 1939

Honorable J. E. Matthews  
Director of Penal Institutions  
Jefferson City, Missouri

5-18  
FILED  
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Dear Sir:

We acknowledge your request for an opinion dated April 22, 1939, which reads as follows:

"Attached is a copy of a Court Order committing a prisoner to this Institution for safekeeping.

"Since this prisoner was in a hospital before being brought to this Institution, we feel that they have committed him here to keep down expense on their part and have him hospitalized in this Institution. As we have considerable trouble segregating a safekeeper, we do not think they should be sent here merely for hospitalization which seems to be why this man was committed.

"I request that an opinion be rendered covering safekeepers, if this should be by Court Order, the type of form we should accept for commitment and what expense should be charged to the County during their stay in this Institution."

We also acknowledge copy of Circuit Court Order in your possession, purporting to commit one, R. H. Neel to the penitentiary for safekeeping, pending a continuance of his cause to the next regular term of court of Cooper County.

Here you have a defendant under arrest and committed to the penitentiary, pending trial on a bailable offense.

Section 648 R. S. Mo. 1929 provides:

"No person's body shall be imprisoned or restrained unless by authority of law."

Section 3487 R. S. Mo. 1929 provides:

"If the offense be not bailable, or sufficient bail be not offered, the prisoner shall be committed to the jail of the county in which the same is to be tried, there to remain until he be discharged by due course of law."

Section 3570 R. S. Mo. 1929 provides:

"An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer, under authority of a warrant or otherwise. The officer must inform the defendant by what authority he acts, and must also show the warrant if required."

Section 8389 R. S. Mo. 1929 provides:

"There shall continue to be maintained at the City of Jefferson, in the County of Cole, a state penitentiary and prison, for the confinement and reformation, as well as for the punishment, of all persons sentenced by any court of competent jurisdiction in this state, for the commission of any crime, the punishment for which is confinement in the penitentiary, in which the person so sentenced shall be securely confined, except as herein provided, employed at hard labor, and governed in the manner herein directed."

Section 8413 R. S. Mo. 1929 provides:

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"Whenever any convict shall be delivered to said board, the officer having such convict in charge shall deliver to the board the certified copy of the sentence received by such officer from the clerk of the court, and shall take from the board a certificate of the delivery of such convict."

50 Corpus Juris, page 345, Section 42 reads:

"The place of confinement of prisoners is that which is designated by law. \* \* \* \*"

The Missouri Statutes treat jails as separate institutions from our penitentiary in Chapter 44, Article 9 R. S. Mo. 1929. By statute a circuit court must see to it that prisoners in jail are humanely treated. The court may commit a prisoner charged with crime to the nearest jail of another county. The legislature has provided for the expense of such recommitment to another jail, including medical attention for infectious diseases. (See Sections 8537, 8545, 8551, 8554 and 8555 R. S. Mo. 1929.)

#### CONCLUSION

We are of the opinion that the penal board pursuant to the above statutes, have no power to receive and imprison any person except after sentence for a crime. We are of the opinion that the board has no right to imprison R. H. Neel awaiting trial for embezzlement, and that his purported commitment to the penitentiary for safekeeping by the court is void and of no legal consequence.

The trial court could imprison in a neighboring county jail for safekeeping, as provided in the statutes, but there is no legal authority to imprison in the penitentiary except where one is sentenced there for a crime.

Respectfully submitted,

APPROVED:

WM. ORR SAWYERS  
Assistant Attorney-General

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J. E. TAYLOR

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