

MAGISTRATE COURTS: Magistrate clerks can issue warrants and set the amount of and approve bonds in criminal cases.



November 7, 1947

Honorable Walter A. Eggers
Judge of the Magistrate Court
Perry County
Perryville, Missouri

Dear Judge Eggers:

This is in reply to your letter of October 16, 1947, which reads as follows:

"A copy of the 'Summary of Opinions of the Attorney General in relation to Magistrate Courts' reached me in yesterday's mail.

"I wish to thank you for this copy and I believe that the Magistrates will appreciate it very much and it should prove of great assistance to all.

"I am wondering whether or not one bill was omitted in the 'Summary of Bills enacted by the 64th General Assembly.' I am referring to Senate Bill No. 131 which became effective September 10, 1947.

"In my opinion this bill now permits clerks and deputy clerks of magistrate courts to issue process and I feel that this new section of the statutes will change the opinion rendered by your office under date of Feb. 18, 1947, #93-47, listed on page 8 of the booklet."

The question presented is whether clerks of magistrate courts are authorized, under the provisions of Section 3791 of Senate Bill No. 131 of the 64th General Assembly, to issue

process for the apprehension of persons charged with criminal offenses. Said Senate Bill became effective after the completion of the summary of opinions of the Attorney General in relation to magistrate courts and was not considered in that compilation.

In an opinion rendered to Honorable Stanley Wallach, Prosecuting Attorney of St. Louis County, and directed to Mr. L. L. Bornschein, Assistant Prosecuting Attorney, dated February 18, 1947, this department held, inter alia, that a warrant in a criminal proceeding before a magistrate court could not be issued by a clerk of that court. Said ruling was based largely on Section 3791 of Senate Bill No. 215 of the 63rd General Assembly, found at page 840 of the Laws of Missouri, 1945, which gave said power and jurisdiction only to certain officials. The General Assembly had not given magistrate clerks such power and jurisdiction.

However, in reenacting Section 3791, the 64th General Assembly expressly authorized clerks of magistrate courts to issue process for the apprehension of persons charged with criminal offenses. Said section now provides as follows:

"The following officers shall have power and jurisdiction to cause to be kept all laws made for the preservation of the public peace, to issue process for the apprehension of persons charged with criminal offenses, and hold them to bail; require persons to give security to keep the peace, and to execute the powers and duties herein conferred in relation thereto: The judges of the supreme court throughout the state; judges of the courts of record, except probate judges, within their respective jurisdiction; clerks and deputy clerks of magistrate courts within their respective counties; the mayors and police judges of incorporated cities and towns within the limits of their respective corporations: Provided, that nothing herein contained shall be so construed as to authorize the mayors and police judges of incorporated cities and towns to exercise jurisdiction in prosecutions under the laws of this state, other than those instituted under this article for surety to keep the peace."

(Underscoring indicates new matter.)

Therefore, in view of said recent reenactment of Section 3791, the clerks of magistrate courts may issue process for the apprehension of persons charged with criminal offenses. Our opinion to Honorable Stanley Wallach is modified in that respect.

Your attention is directed to an opinion of this department which was rendered to you as Judge of the Magistrate Court of Perry County on February 17, 1947, holding that clerks of magistrate courts are not authorized to fix the amount of, take, or approve the bond of a defendant in a criminal case. Said opinion ruled that only those persons authorized by law could set the amount of and approve such a bond. However, it was conceded there that had it been specifically provided that clerks could set the amount of and approve such bonds they could legally have performed those acts. We believe Section 3791, supra, does directly authorize clerks of magistrate courts to set the amount of and approve the bond of a defendant in a criminal case by providing that:

"The following officers (clerks and deputy clerks of magistrate courts within their respective counties) shall have power and jurisdiction * * * to issue process for the apprehension of persons charged with criminal offenses, and hold them to bail; require persons to give security to keep the peace, and to execute the powers and duties herein conferred in relation thereto: * * *"
(Words in parenthesis ours.)

Therefore, our opinion to Honorable Walter A. Rogers, dated February 17, 1947, is hereby withdrawn.

Conclusion.

In view of the foregoing, it is the opinion of this department that clerks and deputy clerks of magistrate courts are authorized, within their respective counties, to issue process for the apprehension of persons charged with criminal offenses. It is further our opinion that said clerks and deputy clerks within their respective counties are authorized to set the amount of and approve the bond of a defendant in a criminal case.

Respectfully submitted,

APPROVED:

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