

OFFICERS: Sheriffs required to receive into county jail persons arrested without warrant.

*Bail Bond
Sheriffs*

Sheriffs not authorized to fix bail of persons arrested without warrant.

October 5, 1949

10/21/49

Honorable H. K. Stumberg,
Prosecuting Attorney,
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St. Charles, Missouri

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Dear Sir:

Reference is made to your request for an official opinion of this office reading as follows:

" Will you please give me your official opinion as to whether the sheriff is authorized to hold a prisoner brought in by a member of the State Highway Patrol or an agent of the Conservation Commission over the week-end when no charge has been filed due to the fact that the Magistrate is not available to issue a warrant of commitment.

"If the sheriff is authorized to hold these individuals over twenty hours, can he accept a bond for their appearance in a Magistrate Court upon a misdemeanor charge?"

With respect to your first question, your attention is directed to Section 9195, R.S. Mo. 1939, reading as follows:

"The sheriff of each county in this state shall have the custody, rule, keeping and charge of the jail within his county, and of all the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible; but no justice of the peace shall act as jailer, or keeper of any jail, during the time he shall act as such justice."

Your attention is further directed to Section 9196, R. S. Mo. 1939, reading as follows:

"It shall be the duty of the sheriff and jailer to receive, from constables and other officers,

all persons who shall be apprehended by such constable or other officers, for offenses against this state, or who shall be committed to such jail by any competent authority; and if any sheriff or jailer shall refuse to receive any such person or persons, he shall be adjudged guilty of a misdemeanor, and on conviction shall be fined in the discretion of the court."

That agents of the Conservation Commission of Missouri have the power to arrest on view in certain specified instances appears from Section 8971.6, Missouri Revised Statutes Annotated, reading in part as follows:

"Any such agent may arrest, without warrant, any person caught by him or in his view violating or who he has good reason to believe is violating, or has violated this Act or any such rules and regulations, and take such person forthwith before a magistrate or any court having jurisdiction, who shall proceed without delay to hear, try and determine the matter as in other criminal cases."

Members of the State Highway Patrol have the right to arrest on view also, as appears from the provisions of Sections 8358a, Missouri Revised Statutes Annotated and 8360, R.S. Mo. 1939 which read in part as follows:

"The members of the State Highway Patrol shall have full power and authority as now or hereafter vested by law in peace officers when working with and at the special request of the sheriff of any county, or the chief of police of any city, or under the direction of the superintendent of the State Highway Patrol, or in the arrest of anyone violating any law in their presence or in the apprehension and arrest of any fugitive from justice on any felony violation. * * *"

Section 8360, R. S. Mo. 1939 reads as follows:

"Any person arrested by a member of the patrol shall forthwith be taken by such member before the court or magistrate having jurisdiction of the crime whereof such person so arrested is charged there to be dealt with according to law."

Viewing these various statutes in relationship with each other, it appears that it is the duty of the sheriff to receive such persons so arrested into his custody in the jail.

With respect to your second question, your attention is directed to Section 3965, R.S. Mo. 1939 which reads as follows:

"When any sheriff or other officer shall arrest a party by virtue of a warrant upon an indictment, or shall have a person in custody under a warrant of commitment on account of failing to find bail, and the amount of bail required is specified on the warrant, or if the case is a misdemeanor, such officer may take bail, which in no case shall be less than one hundred dollars, and discharge the person so held from actual custody."

This is the only statute which we find that authorizes a sheriff to take bail with the exception of Section 13136, R.S. Mo. 1939, which authorizes sheriffs to require offenders against the law in his view to enter into a recognizance for keeping the peace and appearance in Circuit Court. You will note that it is directed only to cases in which an arrest has been made under a warrant and does not relate to cases in which an arrest has been made on view. That in the absence of such statutory authority, a sheriff has no right to let a person to bail appears from *State vs. Howell*, 11 Mo. 613. This was an action in which a recognizance had been taken by the sheriff upon arresting a person for contempt of court. The contemnor did not appear and a forfeiture was ordered and a scire facias issued. A demurrer to the scire facias was sustained by the trial court and its action in this regard affirmed in the following words:

"There is no law authorizing a sheriff to take a recognizance under the circumstances in which this was taken; therefore, his act was without authority and void. The other Judges concurring, the judgment will be affirmed."

Suprisingly, it does not seem that the General Assembly has at any time since the rendition of the decision quoted, seen fit to provide for the letting to bail of persons arrested on view; however, all of the statutes which we have found authorizing such arrests coupled with the power to make the arrest a requirement that the person so arrested be forthwith taken before a magistrate, then, of course, it would be possible for bail to be found. It is only due to the peculiar factual situation you have outlined and which no doubt occurs in many other counties that such persons are not afforded an opportunity to find bail.

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In this regard, your attention is directed to Section 4346, R. S. Mo. 1939, the so-called, "twenty hour statute" which affects the right of persons so arrested to their release. The statute reads as follows:

"All persons arrested and confined in any jail, calaboose or other place of confinement by any peace officer, without warrant or other process, for 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; and every such person shall, while so confined, be permitted at all reasonable hours during the day to consult with counsel or other persons in his behalf; and any person or officer who shall violate the provisions of this section, by refusing to release any person who shall be entitled to such release, or by refusing to permit him to see and consult with counsel or other persons, or who shall transfer any such prisoner to the custody or control of another, or to another place, or prefer against such person, a false charge, with intent to avoid the provisions of this section, shall be deemed guilty of a misdemeanor.

CONCLUSION

In the premises, we are of the opinion that a sheriff must receive into his custody persons arrested on view by the members of the State Highway Patrol, or agents of the Conservation Commission of Missouri.

It is our further opinion that such sheriff may not let to bail such persons so arrested, but that in the event a formal charge is not filed within twenty hours immediately following such arrest, such persons are entitled to discharge from custody.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J.E. TAYLOR
Attorney General 