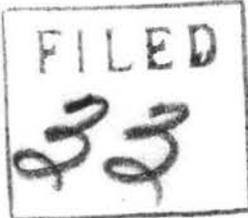


BOND:  
ARREST:

One who is arrested under a misdemeanor warrant in a county other than the one in which the offense was committed and the warrant issued, is entitled to make bond before a Judge or a Magistrate of a court having original jurisdiction to try criminal offenses of the county where such arrest is made.

JOHN W. DALTON  
XXXXXXXXXXXX

March 19, 1953



J. C. Johnsen  
XXXXXXXXXX

Honorable R. M. Gifford  
Prosecuting Attorney  
Sullivan County  
Green City, Missouri

Dear Mr. Gifford:

We render herewith our opinion on your request of March 9, 1953, which request is as follows:

"A misdemeanor warrant is issued from the office of Magistrate of T county for a violation of the Wild Life Code for a resident of J County and the warrant is executed and the violator is placed in the county jail of J county and the sheriff of T county is notified that the prisoner is in custody. Immediately upon being placed in custody the individual charged demands a bond. The question that arises is whether the defendant is entitled to make recognizance in J county or must he forego the privilege of attempting to make bond until he is returned to the Magistrate of the county from where the warrant issued."

We believe that Supreme Court Rule 21.13, which took effect January 1, 1953, now covers the situation. Following is the text of the rule:

"21.13--Bail--Arrest in Another County. If the offense charged is bailable and the arrest occurs in a county other than that in which the alleged offense was committed, and the warrant issued,

Honorable R. M. Gifford

"the officer making the arrest shall, when requested by the person arrested, take him before a judge or magistrate of a court in such county having original jurisdiction to try criminal offenses, who shall admit him to bail in such sum as may seem to be sufficient and proper with sufficient security for his appearance before the judge or magistrate out of whose court the warrant issued, (or if he is absent or his office be vacant, then before the nearest judge or magistrate of the court of such county having original jurisdiction to try criminal offenses) at a time to be stated in the bond. Such bond shall be transmitted to and filed with the judge or magistrate before whom the same is returnable."

Any misdemeanor, of course, is a "bailable offense".  
Article I, Section 20, Missouri Constitution, 1945, provides:

"Sec. 20. Bail guaranteed--exceptions.--  
That all persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great."

A capital offense is one which is punishable - that is to say, liable to punishment - with death, Ex parte Dusenberry 97 Mo. 504, 11 S. W. (2d) 17.

#### CONCLUSION

It is the opinion of this office that one who is arrested under a misdemeanor warrant in a county other than the one in which the offense was committed and the warrant issued, is entitled to make bond before a Judge or a Magistrate of a court having original jurisdiction to try criminal offenses of the county where such arrest is made.

This, opinion, which I hereby approve, was prepared by

Honorable R. M. Gifford

my assistant, Mr. W. Don Kennedy.

Very truly yours,

JOHN M. DALTON  
Attorney General

WDK:mm