

CRIMINAL LAW:  
MAGISTRATES:

Duty of magistrate to issue a warrant upon a felony complaint filed by a person other than the prosecuting attorney.



February 10, 1953

Honorable Stewart E. Tatum  
Prosecuting Attorney of  
Jasper County  
Joplin, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office, which request reads in part as follows:

"This is an inquiry into the construction by your office of Sec. 21.08 of the 1953 Rules of Criminal procedure adopted by the Missouri Supreme Court. The query is this: Is it mandatory for the Magistrate Judge to issue a warrant for arrest in the instance a private citizen files a verified complaint (felony) before the Magistrate; or, is the Magistrate justified in withholding a warrant and requiring the Prosecuting Attorney to file a felony complaint under this rule."

Section 5 of Article V, Constitution of Missouri 1945, authorizes the Supreme Court to establish rules of practice and procedure for all courts. Under the authority of this provision the Supreme Court has adopted certain rules of criminal procedure. These rules became effective January 1, 1953. Rule 21.08, to which you refer and at which your inquiry is directed, provides as follows:

"Whenever complaints shall be made in writing, verified by oath or affirmation (including an oath or affirmation on information and belief by a prosecuting attorney) and filed in any court having original jurisdiction to try criminal offenses, charging that a felony has

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been committed by a named accused, or if his name is unknown, by any name or description from which he can be identified with reasonable certainty, it shall be the duty of the judge or magistrate thereof, and, upon complaint made by the prosecuting attorney, it shall also be the duty of the clerk thereof to issue a warrant reciting the accusations and commanding the officer to whom it shall be directed forthwith to take the accused and bring him before such judge or magistrate to be dealt with according to law. If such warrant is issued under the hand of the judge or magistrate, it need not be sealed but if it is issued under the hand of the clerk of the court, the seal of the court shall be attached thereto."

You inquire whether under this rule it is mandatory for a magistrate to issue a warrant where a private citizen files a verified felony complaint or is the issuance of the warrant in such instance discretionary.

We would first like to direct your attention to Section 544.020, RSMo 1949, which reads as follows:

"Whenever complaint shall be made, in writing and upon oath, to any magistrate setting forth that a felony has been committed, and the name of the person accused thereof, it shall be the duty of such magistrate to issue a warrant reciting the accusation, and commanding the officer to whom it shall be directed forthwith to take the accused and bring him before such magistrate, to be dealt with according to law."

You will note that Rule 21.08 is substantially the same as Section 544.020 where a complaint is filed by someone other than the prosecuting attorney, for it reads that "Whenever a complaint shall be made in writing, verified by oath or affirmation \* \* \* charging that a felony has been committed by a named accused, \* \* \* it shall be the duty of the \* \* \* magistrate \* \* \* to issue a warrant reciting the accusations and commanding the officer to whom it shall be directed forthwith to take the accused and bring him before such \* \* \* magistrate to be dealt with according to law." The provisions are, consistent, clear and unambiguous and we are of the opinion that the magistrate is vested with no discretion, but must issue the warrant.

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CONCLUSION

Therefore, it is the opinion of this office that under the provisions of Section 544.020, RSMo 1949, and Supreme Court Rule 21.08 where a person other than the prosecuting attorney files with a magistrate a complaint in writing, verified by oath or affirmation, charging that a felony has been committed by a named accused, it is the duty of said magistrate to issue a warrant of arrest, and he may not exercise a discretion in the matter.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. D. D. Guffey.

Very truly yours,

JOHN M. DALTON  
Attorney General

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