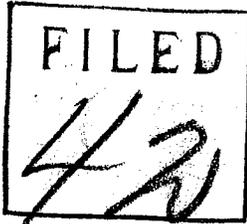


CRIMINAL LAW:
MAGISTRATE COURTS:

Form of recognizance of defendant for
appearance at trial.



April 14, 1954

Honorable Charles J. Hoover
Prosecuting Attorney
Grundy County
Trenton, Missouri

Dear Sir:

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

"I would very much appreciate an official opinion answering the two questions hereinafter set forth, relative to a proper and legal appearance bond for a defendant who is brought before a Magistrate in answer to a misdemeanor charge filed by the Prosecuting Attorney. The approximate procedure is that defendant is brought before the Magistrate where the information is read to him and he is advised of his constitutional rights. He then enters a plea of not guilty, demands a trial by a jury (and in most instances makes it known to the Court that he desires time to prepare for trial) and asks that the cause be continued, and that a future trial date be fixed or set. He also asks that the amount of his bond be determined and fixed for appearance on the day set for trial. Under these circumstances, the amount of the bond is fixed at \$1,000.00,

Honorable Charles J. Hoover

and he desires to proceed to give bond for his appearance on the date set for trial.

"Under the brief, assumed facts outlined above, may I please have your opinion

"First as to what kind of bond defendant in the first instance should give and what should be the conditions and terms of the bond.

"Second, what constitutional provisions, statutes, and rules of the Supreme Court govern the giving of a proper bond."

In view of the conclusion which we have reached we have grouped your questions for answering. We believe that the answer to your second question will appear in the course of the opinion.

The procedure before magistrates in connection with the prosecution of misdemeanors appears as Chapter 543, RSMo 1949. As applicable with particularity to your question we direct your attention to Section 543.080, RSMo 1949, reading as follows:

"When the defendant shall be brought before the magistrate, or shall be held in custody, charged by information with any misdemeanor, it shall be the duty of the magistrate, unless a continuance be granted, forthwith to hear the case as herein provided." (Emphasis ours.)

Your attention is further directed to Rule 22.01 of the Supreme Court which is substantially the same as the statute quoted. Your further attention is directed to Section 543.120, RSMo 1949, reading as follows:

"Upon good cause the magistrate may postpone the trial of a cause to a day certain; in which case he shall require the defendant to enter into a recognizance with sufficient security, conditioned that

Honorable Charles J. Hoover

he will appear before the magistrate at the time and place appointed then and there to answer the charge alleged against him in the information and not to depart without leave."

This section is similar to Rule No. 22.02 of the Supreme Court which we quote at length for reasons appearing infra.

"Upon good cause shown the magistrate may postpone the trial of a cause to a day certain; in which case, if the defendant has not previously been admitted to bail, he shall require the defendant to enter into a bail bond with sufficient security, conditioned that he will appear before the magistrate at the time and place appointed, then and there to answer the charge alleged against him in the information and not to depart without leave." (Emphasis ours)

We believe that the emphasized portion of the rule discloses clearly that the request of a defendant for a postponement after arraignment on a misdemeanor is a "continuance" within the meaning of the statutes relating to procedure before magistrates in such cases. In these circumstances we think that the answer to your question with respect to the form, conditions and terms of bonds to be given is found in the provisions of Section 543.150, RSMo 1949, which reads as follows:

"When a continuance is granted, the recognizance required of the defendant may be in the following form:

"We, A B, as principal, and E F and G H, as sureties, acknowledge ourselves to owe and be indebted to the state of Missouri, in the sum of _____ dollars, to be void upon this condition: That said A B shall personally appear before O K, a magistrate within and for the county of _____, and state of Missouri, at his office, on the _____ day of _____ 19 ____, at _____ o'clock __ M.,

Honorable Charles J. Hoover

then and there to answer to an information for _____ (here state the offense), and not to depart without leave; otherwise to remain in force.

Witness our hands and seals, this ____ day of _____, 19 ____

Principal

Sureties

Taken and acknowledged before me this ____ day of _____, 19 ____

Magistrate."

We note that the statutory form does not include a signature line for the person designated as "principal." However, since the statute is directory we treat this omission as a mere oversight particularly in view of the fact that the "principal" is referred to in the body of the recognizance.

CONCLUSION

In the premises we are of the opinion that a defendant who has requested the postponement of the time of his trial upon a misdemeanor charge in magistrate court must enter into the form of recognizance provided by Section 543.150, RSMo 1949, or else stand committed to custody until the time of trial.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General