

OFFICERS:
ARE CIVILLY LIABLE FOR DAMAGES
WHEN SIGNING COMPLAINTS FOR
ISSUANCE OF CRIMINAL WARRANTS;
WHEN:

A sheriff, or member of State Highway Patrol signing complaint for criminal warrant does so in individual and not in official capacity. If prosecution based on complaint terminates favorably to accused, who

sues complainant in civil action for damages, latter has same legal rights in defending as any other citizen under same conditions. If he successfully alleges and proves that at the time complaint was signed he had probable cause to believe, and did believe, that the crime alleged was committed, and was committed by accused, this is a valid and complete defense and will render him immune from civil liability for damages in such action.

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May 5, 1954

Hon. W. H. Pinnell
Prosecuting Attorney
Barry County
Cassville, Missouri

Dear Sir:

This department is in receipt of your recent request for a legal opinion, which reads in part as follows:

"The problem often arises as to the civil liability of a Law Enforcement Officer in signing complaints as such Law Enforcement Officer, either in misdemeanor or felony cases. In particular, does the Sheriff or a member of the Highway Patrol have any immunity when they sign a complaint, in either felonies or misdemeanors, that a crime has been committed. This question is based on the premise that they have reasonable grounds to believe that a crime has been committed. * * * * *

The request is not clear to us and we are not sure as to the exact inquiry intended to be presented, but assume that your question is whether or not a sheriff or a member of the State Highway Patrol who signs a complaint accusing a person of a criminal offense, and when a criminal prosecution based on said complaint is instituted, terminates favorably to the accused, if such officer has any immunity in a civil action for damages brought against him by the accused. The inquiry appears to infer that the complainant in such instances is at the time acting as a law enforcement officer. It is also stated that the request is based on the premise (apparently that at the time of the signing of the complaint) the officer would have "reasonable grounds to believe that a crime has been committed."

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Chapter 57 RSMo 1949 contains all the statutory provisions regarding the office of sheriff, and Sections 57.100 and 57.110 of said chapter give the general duties required of him, and the later section states that he is a conservator of the peace. Section 57.100 reads as follows:

"Every sheriff shall quell and suppress assaults and batteries, riots, routs, affrays and insurrections; shall apprehend and commit to jail all felons and traitors, and execute all process directed to him by legal authority, including writs of replevin, attachments and final process issued by magistrates."

Section 57.110 reads as follows:

"Every sheriff shall be a conservator of the peace within his county, and shall cause all offenders against law, in his view, to enter into recognizance, with security, to keep the peace and to appear at the next term of the circuit court of the county, and to commit to jail in case of failure to give such recognizance. In any emergency the sheriff shall appoint sworn deputies, who shall be residents of the county, possessing all the qualifications of sheriff. Such deputies shall serve not exceeding thirty days, and shall possess all the powers and perform all the duties of deputy sheriffs, with like responsibilities, and for their services shall receive two dollars per day, to be paid out of the county treasury."

Neither of these sections provide that one of the official duties of the sheriff shall be the signing of complaints accusing persons of criminal offenses, which complaints are used as a basis for the institution of criminal prosecutions. It further appears that no other section or sections of the statutes of Missouri impose the duty of signing such complaints upon the sheriff; consequently, the signing of them is no part of the official duties of the sheriff. In doing so, the sheriff acts, not in his official capacity, but in his individual capacity, and as a private citizen. Even though he should attempt to sign an affidavit for a state warrant as a law enforcement officer, for example, by adding the words

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"Sheriff of _____ County, Missouri," after his signature, such words would not change the character of this signature in any manner, but would only be descriptive of the person who signed the complaint, and the affixing of the signature would only be an act of a private citizen.

Chapter 43 RSMo 1949 and Sections 43.050 and 43.070, later added to the chapter as shown by the Revised Statutes of Missouri 1953, Cum. Supp., contains all the statutory provisions in regard to the Highway Patrol of Missouri. Sections 43.160, 43.180, 43.190, 43.200, and 43.210 RSMo 1949, give the general duties of the members of the Highway Patrol.

Section 43.160 reads as follows:

"It shall be the duty of the patrol to police the highways constructed and maintained by the commission; to regulate the movement of traffic thereon; to enforce thereon the laws of this state relating to the operation and use of vehicles on the highways; to enforce and prevent thereon the violation of the laws relating to the size, weight and speed of commercial motor vehicles and all laws designed to protect and safeguard the highways constructed and maintained by the commission. It shall be the duty of the patrol whenever possible to determine persons causing or responsible for the breaking, damaging or destruction of any improved hard surfaced roadway, structure, sign markers, guard rail, or any other appurtenance constructed or maintained by the commission and to arrest persons criminally responsible therefor and to bring them before the proper officials for prosecution. It shall be the duty of the patrol to cooperate with such state official as may be designated by law in the collection of all state revenue derived from highway users as an incident to their use or right to use the highways of the state, including all license fees and taxes upon motor vehicles, trailers, and motor vehicle fuels, and upon, with respect to, or on the privilege of the manufacture, receipt,

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storage, distribution, sale or use thereof (except the sales tax on motor vehicles and trailers, and all property taxes)."

Section 43.180 reads as follows:

"The members of the state highway patrol, with the exception of the director of radio and radio personnel, 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. The members of the state highway patrol shall have full power and authority to make investigations connected with any crime of any nature. The expense for the patrol's operation under this section shall be paid monthly by the state treasurer chargeable to the general revenue fund, provided, however, the amount appropriated from the general revenue fund shall not exceed ten per cent of the total amount appropriated for the Missouri state highway patrol."

Section 43.190 reads as follows:

"The members of the patrol, with the exception of the director of radio and radio personnel, are hereby declared to be officers of the state of Missouri and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of this state. The members of the patrol shall have the powers now or hereafter vested by law in peace officers except the serving or execution of civil process. The members of the patrol shall have authority to arrest without writ, rule, order or process any person detected by him in the act of violating any law of

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this state. When a member of the patrol is in pursuit of a violator or suspected violator and is unable to arrest such violator or suspected violator within the limits of the district or territory over which the jurisdiction of such member of the patrol extends, he shall be and is hereby authorized to continue in pursuit of such violator or suspected violator into whatever part of this state may be reasonably necessary to effect the apprehension and arrest of the same and to arrest such violator or suspected violator wherever he may be overtaken."

Section 43.200 reads as follows:

"The members of the patrol shall not have the right or power of search nor shall they have the right or power of seizure except to take from any person under arrest or about to be arrested deadly or dangerous weapons in the possession of such person."

Section 43.210 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."

None of the above quoted sections of the Missouri statutes nor any others impose the duty of signing complaints accusing persons of criminal offenses upon members of the State Highway Patrol. A member of the patrol may, within his discretion, legally sign such complaints under the same circumstances and to the same extent as any other citizen, and the signing of affidavits for the issuing of state warrants is no part of the official duties of a member of the patrol. If a patrolman were to attempt to sign a complaint in the capacity of a law enforcement officer, for example, by adding the words or title, "Captain, Missouri State Highway Patrol," after his signature, these words would not make the affixing of the signature an official act, but would, as in the instance of the sheriff

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mentioned above, be merely descriptive of the person who signed the complaint and of course that person would be a private citizen insofar as the law is concerned.

Section 543.050 RSMo 1949 provides when a magistrate shall issue a warrant for the arrest of a person accused of a misdemeanor and reads as follows:

"Upon the filing of a complaint in a magistrate court, verified by the oath or affirmation of a person competent to testify against the accused, if the magistrate be satisfied that the accused is not likely to try to escape or evade prosecution for the offense alleged, it shall be his duty to forthwith forward such complaint to the prosecuting attorney, and it shall be the duty of the complainant to forthwith inform the prosecuting attorney what facts can be proved against the accused, and by what witnesses, and the residence of such witnesses; and if, after investigation of such facts, the prosecuting attorney be satisfied that an offense has been committed, and that a case against the accused can be made, it shall be his duty to immediately file his information before the magistrate taking the complaint, and give to said magistrate a list of the witnesses to be subpoenaed on the part of the state; and upon the filing of the information by the prosecuting attorney, as herein provided, with the magistrate, or upon the filing of an information by the prosecuting attorney upon his own information and belief, without complaint of a private individual having previously been filed, it shall be the duty of the magistrate to forthwith issue a warrant for the arrest of the defendant, directed to the sheriff, or, if no such officer is at hand, then to some competent person who shall be specially deputed by the magistrate to execute the same, by written endorsement to that effect on such warrant."

Section 544.020 RSMo 1949 provides when a magistrate shall issue a warrant for the arrest of a person accused of a felony and reads as follows:

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"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."

From the foregoing, it is our thought that neither a sheriff nor a member of the State Highway Patrol can, under the present law, sign an affidavit for a state warrant in his official capacity, but may sign same only in his individual capacity. It therefore follows, in such instances, that the complainant has the same rights, duties and liabilities as any other citizen would have under the same or similar circumstances.

In the event the accused person is prosecuted for the criminal offense alleged against him in the complaint, and the prosecution terminates favorably to him; the accused thereafter brings a civil suit for damages against the complainant; the mere fact that defendant was a sheriff or a member of the State Highway Patrol will not afford the defendant any immunity from civil liability in such suit, nor will it afford him any special privileges in making his defense.

By the word "immunity," as used in the opinion request, we assume that the writer intended to use such term in the sense as to whether or not the plaintiff in a civil action for damages could legally recover a judgment against the defendant.

It is also noted that the request assumes that the sheriff had "probable grounds" for believing that a crime had been committed, apparently, when he signed the complaint. It appears to us that the terms "probable cause" would more correctly convey the meaning which the writer must have intended. Therefore, we shall use the terms "probable cause" rather than "probable grounds" in the course of this discussion. In this connection, we call attention to the case of *Foster vs. Railroad Company*, reported in Volume 321, No. 1202, in which a definition of "probable cause" was given. At l.c. 1221, the court said:

"Probable cause for criminal prosecution has been defined as 'a reasonable ground for suspicion, supported by circumstances sufficiently strong in

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themselves to warrant a cautious man in the belief that the party is guilty of the offense with which he is charged.' (18 R.C.L. 35, citing Stacey v. Emery, 97 U.S. 642. See also Stubbs v. Mulholland, supra, p 74; Irons v. Express Co. (Mo.), 300 S.W. 283; Carp v. Ins. Co., 203 Mo. 295, 101 S.W. 78; Hanser v. Bieber, 271 Mo. 326, 197 S.W. 68.)"

Also, the court said in the case of Coleman v. Ziegler, 226 SW2d, 388, at l.c. 391, as follows:

"* * * Our courts have uniformly held that probable cause which will relieve a prosecutor from liability 'is a belief by him of the guilt of the accused, based on circumstances sufficiently strong to induce such belief in the mind of a reasonable and cautious man.' Butcher v. Hoffman, 99 Mo.App. 239, 250, 73 S.W. 266, 269. See also Vansickle v. Brown, 68 Mo. 627; Stubbs v. Mulholland, 168 Mo. 47, 67 S.W. 650; Christian v. Hanna, 58 Mo. App. 37."

As to whether or not a complainant has probable cause at the time of signing a complaint accusing one of a criminal offense is always a question of fact to be determined from each individual case, but in the event the complainant is subsequently sued for damages in a civil suit, for damages, if the defense of probable cause is properly pleaded, and proven to the satisfaction of the court or jury, it will be a valid and complete defense to such action, thereby preventing the recovery of a judgment by the plaintiff, and will render the defendant immune from all civil liability for damages in connection with such suit. We believe that our contention as stated, is fully sustained by the holding in the case of Kvasnicka v. Montgomery Ward, 350 Mo. 360, in which the court said at l.c. 372:

"At the request of plaintiff the court told the jury that 'by "probable cause" is meant reasonable grounds for belief supported by circumstances sufficiently strong to warrant a reasonably prudent man, in good faith, to believe that the accused was guilty of the offense charged.'

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See, Foster v. Chicago, B. & Q. R. Co., 321 Mo. 1202, 14 S.W. (2d) 561, 570. Of course, if it appears that there was probable cause for the arrest, indictment and prosecution of plaintiff such fact constitutes a complete defense to this action for malicious prosecution. The burden of proof to show want of probable cause was upon the plaintiff."

CONCLUSION

It is therefore, the opinion of this department that when a sheriff or a member of the State Highway Patrol signs a complaint accusing a person of a criminal offense, such act is in his individual, and not in his official capacity. That in the event a criminal prosecution based on said complaint terminates favorably to the accused person, who later brings a civil action for damages against the complainant, said complainant, in making his defense, has the same legal rights and privileges that any other private citizen would have under the same or similar circumstances. However, if the complainant pleads and proves as his defense that at the time he signed the complaint, he had probable cause to believe, and did believe, that the criminal offense alleged had been committed and that the person accused committed said offense, that such is a valid and complete defense and will render him immune from any civil liability in said action.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Very truly yours,

JOHN M. DALTON
Attorney General

PNC:am