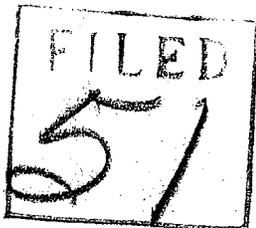


BAIL BOND:  
SHERIFFS:  
MISDEMEANORS:

Sheriff is not authorized to fix amount of  
bond for person arrested without warrant.



September 8, 1955

Honorable Robert Lamar  
Prosecuting Attorney  
Texas County  
Cabeol, Missouri

Dear Sir:

You have recently requested an official opinion from this office on the following matter:

"We have a problem in this County over the Twenty-Hour Law due primarily to the location here at Cabeol of the Highway Department Weight Station. Almost every week-end one or more out-of-state truckers are found in violation either on account of overweight or by reason of some license violation. Our Magistrate, Mr. Impey, holds that it is absolutely unlawful for him to hold court for any purpose on Sunday. Consequently, it is impossible to get a warrant or get bail fixed. In such situations local truckers, or those who pass the scales regularly, are simply given a summons to report later. However, in case of those from a great distance or who are not likely to pass this way again in the foreseeable future, it is a problem. When they happen to be loaded with perishable cargo the troopers do not like to tie them up until Monday if it is avoidable. Most Sundays I am perfectly willing and available for preparing informations, but that is of little help in this situation.

"I would very much appreciate it if you would have an opinion prepared for me in the light of this case which I mentioned above, if it can be found, outlining what our possible remedies may be. If the sheriff,

Honorable Robert Lamar

in case of a man arrested without warrant, after court hours Saturday afternoon can fix bail and take bond, then the violator can either return later or engage an attorney to appear for him without being tied up and his cargo possibly endangered."

It appears to be the well-settled law of this state that, absent statutory authority, a sheriff cannot fix the amount of bail for a person charged with crime or held in custody nor can he approve and take such bail bond before the amount thereof has been fixed absent such statutory authority. See *State v. Walker*, 1 Mo. 546; *State v. Howell*, 11 Mo. 613; *State v. Crosswhite*, 93 SW 247, 195 Mo. 1. It thus becomes incumbent upon us to search the statutes and the rules of the Supreme Court for an answer to your problem. Since, as you point out, it is the fact that court is not in session at the time of the arrest that creates your problem, the statutes and rules pertaining to fixing of bond by the court or the endorsing of the amount of bond on the warrant to be executed by the sheriff are of no help in solving your problem.

Supreme Court Rule 21.14 has to do with arrests of persons without a warrant and it, like Section 544.170 RSMo 1949, limits the time that such person can be held without formal authority to twenty hours. The statute cited makes no provision as to bond during such twenty hour period; however, Supreme Court Rule 21.14 provides:

"If the offense for which such person is held in custody is bailable and the person held so requests, he may be admitted to bail in an amount determined sufficient by a judge or magistrate of a court of such county or of the City of St. Louis having original jurisdiction to try criminal offenses."

(Emphasis supplied.)

Thus it appears that Supreme Court Rule 21.14 only authorizes a judge or magistrate to fix the bond for one held in arrest without warrant. No other rule or statute has been found which would authorize the sheriff to fix such bond. Therefore, it would appear on the basis of the foregoing cases that the sheriff is not authorized to fix such bond.

Honorable Robert Lamar

It might be pointed out that the only situation where the sheriff is authorized to fix a bond is found in the provisions of Supreme Court Rule 32.03 and Section 544.560 RSMo 1949, both considering situations where the defendant is under arrest and in custody by virtue of a warrant charging a misdemeanor and where the amount of bail is not specified on such warrant. Then if, and only if, the judge or magistrate is not in the county, the sheriff or other peace officer may admit the defendant to bail in an amount not less than one hundred dollars or more than one thousand dollars. These provisions afford no solution to your problem since they apply only when one is held by virtue of a warrant duly issued upon a complaint, information or indictment.

CONCLUSION.

It is, therefore, our conclusion, based upon the foregoing, that one arrested without a warrant may not be admitted to bail except by the judge or magistrate under the provisions of Rule 21.14 above set out.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Fred L. Howard.

Yours very truly,

John M. Dalton  
Attorney General

FLH:sm