

RECOGNIZANCES: BONDS:
CONTINUANCES:

Where a criminal case is continued generally by the court the recognizance is still in effect and persons signing the recognizances may be held thereon.



April 12, 1955

Honorable John S. Stevens
Assistant Prosecuting Attorney
St. Louis County
Courthouse
Clayton, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"Where a criminal case is continued generally by the Court is the bond still in effect for any purpose? Specifically can the bondsman be held thereon, and must the bondsman report that bond on his general qualifications?"

Section 544.450, RSMo 1949, reads:

"If the offense with which the prisoner is charged be bailable, and the prisoner offer sufficient bail, a recognizance shall be taken for his appearance to answer the charge before the court in which the same is cognizable, on the first day of the next term thereof, and from day to day, and term to term thereafter, and to abide sentence and judgment therein, and not to depart such court without leave, and thereupon he shall be discharged."

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We find no case construing this statute, presumably, because it is plain and clear upon its face that its meaning is that the continuance of a criminal case does not relieve the persons who have signed a recognizance for the appearance of the defendant.

The above Section 544.450, is the product of an amendment, made May 5th, 1931 of Section 3486, RSMo 1929. Section 3486 read as follows:

"If the offense with which the prisoner is charged be bailable, and the prisoner offer sufficient bail, a recognizance shall be taken for his appearance to answer the charge before the court in which the same is cognizable, on the first day of the next term thereof, and from day to day, and term to term thereafter, and to abide sentence and judgment therein, and not to depart such court without leave, and thereupon he shall be discharged."

This section was construed in the case of State v. McCullough, 27 S.W. (2d) 1045. The court there held that a recognizance which required the defendant to appear upon a certain day and "at each and every term to which said cause may be continued," was not binding as to the aforesaid continuance because the statute made no mention of continuance. Since the amendment of the statute as noted above, this objection is, of course, removed.

In this regard we also direction attention to Supreme Court Rule 32.05, which reads as follows:

"If a person is admitted to bail after arrest upon a warrant issued upon a complaint, information or indictment charging the commission of a misdemeanor, the condition of his bond shall be that he will appear at a stipulated time, and from time to time as required by the court, to answer the charge; that he will submit himself to the orders, judgment, sentence and process of the court having jurisdiction thereof, either originally

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or upon change of venue; and that he will not depart without leave.

"(b) If a person is admitted to bail for his appearance for a preliminary examination upon a complaint charging the commission of a felony, the condition of his bond shall be that he will appear for such examination at a stipulated time, and from time to time as required by the magistrate, that he will submit himself to the orders and process of the magistrate; that if he is bound over to answer the charge upon which he has been granted a preliminary examination or as to which he has waived such examination, he will appear in the court in which an indictment may be found or an information filed against him, at a stipulated time, and from time to time as required by the court, to answer the charge; that he will submit himself to the orders, judgment, sentence and process of the court having jurisdiction to try such offense, either originally or upon change of venue; and that he will not depart without leave.

"(c) If a person is admitted to bail after he has been bound over to answer a charge, or after an indictment has been found or an information filed against him, the condition of his bond shall be that he will appear in the court in which an indictment or information has been or may be found or filed against him, at a stipulated time and from time to time as required by the court, to answer the charge; that he will submit himself to the orders, judgment, sentence and process of the court having jurisdiction to try such offense, either originally or upon change of venue; and that he will not depart without leave."

CONCLUSION

It is the opinion of this department that where a criminal case is continued generally by the court that the

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recognizance is still in effect and that persons signing the recognizance may be held thereon.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton
Attorney General

HPW:vlw