

BAIL: Supreme Court Rule 37.485 empowers the
SHERIFF: sheriff of the county in which the of-
MAGISTRATE: fense was committed, to set and take the
ARREST: amount of bail, which shall not be less
than sixteen dollars nor more than two
hundred dollars in accordance with the
bail schedule established by the magis-
trate having jurisdiction over the offense,
only in those cases where the magistrate
court is not in session at the time, and the
arrest of the person is without a warrant for
a misdemeanor involving the operation of a
motor vehicle.

November 8, 1961



Honorable Fred L. Howard
Secretary
Missouri Highway Reciprocity Commission
1004 Jefferson Building
Jefferson City, Missouri

Dear Mr. Howard:

This is in reply to your request for an opinion,
wherein you state:

"We have had some complaints from various counties of the state that certain Magistrates are attempting to prevent Sheriffs from setting bonds in traffic cases pursuant to Supreme Court Rule 37.485. It seems that some Magistrates have adopted other plans for the making of bonds when court is not in session, which plans are not authorized by either statute or rule. It also appears that some Magistrates are not satisfied with the performance of the Sheriff and therefore attempt to prevent him carrying out the authority conferred by said rule 37.485."

Supreme Court Rule 37.485 states, in part, as follows:

"(a) Whenever any officer shall arrest a party without a warrant for a misdemeanor involving the operation of a motor vehicle at a time when the magistrate court of the county in which the offense occurred is not in session, the sheriff of the county in which the offense was committed may take bail which shall not be less than sixteen dollars nor more than two hundred dollars in accordance with the bail schedule established by the magistrate having jurisdiction over the offense. . . "

Basically, when a person is arrested without a warrant for a misdemeanor involving a traffic offense, he should be taken before a magistrate to make bail.

Supreme Court Rule 37.485 specifically provides for the manner in which bail may be made by a person arrested without a warrant for a misdemeanor involving a traffic offense when the magistrate court of the county in which the offense occurred is not in session. In such a situation Rule 37.485 provides that the sheriff of the county may take bail from such person. Such bail, however, shall not be less than sixteen dollars nor more than two hundred dollars in accordance with the bail schedule established by the magistrate. No other person, agent, attorney or what have you, is authorized to set or accept bail in this situation.

The Rule would appear to require the magistrate to establish a bail schedule for this purpose in order that the sheriff may follow it in establishing the proper amount of bail in such a situation.

CONCLUSION

It is, therefore, the conclusion of this office that Supreme Court Rule 37.485 empowers the sheriff of the county

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in which the offense was committed, to set and take the amount of bail, which shall not be less than sixteen dollars nor more than two hundred dollars in accordance with the bail schedule established by the magistrate having jurisdiction over the offense, only in those cases where the magistrate court is not in session at the time, and the arrest of the person is without a warrant for a misdemeanor involving the operation of a motor vehicle.

The foregoing opinion, which I hereby approve, was prepared by my assistant George W. Draper, II.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

GWD lc