

8/15/61

*This letter  
revised letter  
originally sent  
out, attached  
hereto*

June 30, 1961

Honorable Darold W. Jenkins  
Prosecuting Attorney  
Saline County  
Marshall, Missouri

FILED  
45

Dear Darold:

This letter is in response to your opinion request dated February 20, 1961. In your letter you raise several questions, all of which I believe can be answered in this letter, therefore not necessitating a formal opinion.

The first question you ask concerns the language of a hypothetical information. In that information you are charging a defendant under the new stealing statute. You raise the question as to whether the stolen property must be itemized and its individual value stated in the information. After discussing this problem with several assistants on the staff, including our chief criminal assistant, we have come to the conclusion that the itemization of the stolen property is necessary to properly inform the defendant of the crime against him and allow him to prepare his defense. However, it may be necessary for the property to have its specific values listed. If the language of the statute is used, this would probably be all that would be necessary. As you may know, Section 560.160, RSMo 1959, uses language describing the property to be "less than fifty dollars" and "at least fifty dollars." We also are of the belief, however, that the listing of approximate values would probably be better practice than using the general statutory language.

In answer to your second question, I believe this is fully resolved in the recent case of State ex rel. Griffin vs. Smith, 258 SW2d 590. It is apparent after reading this case that the prosecuting attorney has a great deal of discretion in the prosecution or non-prosecution of criminal matters.

Honorable Darold W. Jenkins

#2

Your third question is a little more difficult to answer. As you have stated, the magistrate judge's authority to grant paroles is governed by Section 549.193, RSMo 1959. In that section you will note that it specifically states that the magistrate "shall have those powers granted to a circuit court in which there is no parole board, to parole any person or to place any person on probation." In my thinking, if the magistrate judge is to have the powers comparable to the circuit judge's, then it must necessarily follow that the magistrate judge must also be bound by the restrictions on this power by which the circuit judge is bound. Therefore, Section 549.080 and Section 549.070 must be read in conjunction with the statute quote above. In Section 549.080, applicable to felonies, it states that a parole may not be granted to a person previously convicted of a felony. In Section 549.070, applicable to misdemeanors, this restriction is not present. A magistrate may grant a bench parole to a person convicted of a misdemeanor in his court even though such person has been previously convicted of a felony.

I hope our thinking in these matters substantially answers the questions raised in your letter.

You concluded your letter by stating there was "no particular rush about these questions." We, therefore, side-tracked your request in order to handle the numerous urgent requests from legislators on pending legislation.

Best personal regards,

---

THOMAS F. EAGLETON  
Attorney General

TFE:oh;ml