OPINION REQUEST
No. 360(1961)
No. 19(1962)
Answered by letter.

March 26, 1962

FILED
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Honorable Stephen E. Strom
Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri

Dear Mr. Strom:

This refers to your request for an opinion concerning the employment of prisoners in your county pursuant to Section 221.170, RSMo 1959, as amended by House Bill No. 194, 71st General Assembly.

Section 221.170, as so amended, may be somewhat ambiguous on its face. However, a review of the legislative history of House Bill No. 194 makes it clear that the intent of that bill was to change the law only in counties of the first class under charter form of government and counties containing a city of the first class and that paragraphs 1 to 12, inclusive, of amended Section 221.170 should have no application to other counties.

As introduced, House Bill No. 194 would have repealed Section 221.170 and enacted in lieu thereof the provisions now contained in paragraphs 1 to 11, inclusive, of amended Section 221.170, except that the first part of paragraph 1 read as follows: "Any person sentenced to a county jail or to a workhouse in cities outside a county for crime, * * *." The House amended the bill by adding what now appears as paragraph 12 except that the first part of the paragraph read as follows: "Any county or city outside of a county may suspend * * *." (See Perfected Bill.) The Senate amended the bill to change the first parts of paragraphs 1 and 12 to read as they now read in amended Section 221.170. (See Senate Journal for June 21, 1961, pages 1316 and 1317.) Finally, a conference committee amendment which added what now appears as paragraph 13 in amended Section 221.170 was adopted. (See Senate Journal for June 30, 1961,

pages 1586 and 1587, and House Journal for June 29, 1961, page 2045, and June 30, 1961, pages 2072 and 2073.)

The obvious purpose of the amendments during the course of passage of the bill was to reject the proposal that the change in the law with respect to the employment of prisoners should be applicable throughout the state and to provide, instead, that the law should remain unchanged except in counties of the first class under charter form of government and counties containing a city of the first class. Thus, there was no change in the law applicable to Cape Girardeau County, a county of the third class.

It is believed that this basically answers your questions concerning the employment of prisoners under amended Section 221.170. For your county to undertake to apply the principles of the provisions contained in paragraphs 1 to 12 of the amended section would be contrary to the intent of the General Assembly in enacting such amended section. The disbursement of earnings of prisoners in accordance with such provisions would be in direct conflict with the provision of paragraph 13 of the amended section which, as noted in your letter, provides that earnings shall be applied upon the judgment against the prisoner. Also, the employment of prisoners in Cape Girardeau County in the manner contemplated by paragraphs 1 to 12 of the amended section would run afoul of restrictions upon the release of custody of prisoners by the sheriff. In this connection, we are enclosing a copy of an opinion furnished by this office to John Hosmer on December 20, 1954.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

JCB lc

1 enclosure