

STATUTE OF LIMITATIONS:
MISDEMEANOR:
CRIMINAL LAW:
INDICTMENTS:
INFORMATIONS:
WARRANTS:

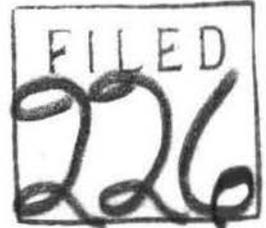
1. Under Section 541.210 an information or indictment in a misdemeanor must be filed within one year after the commission of the offense but service of the warrant on the defendant within one year is not required. 2. Under Section 541.220, RSMo 1959, the one year statute of

limitations imposed by Section 541.210, RSMo 1959, is tolled during the period that the defendant has left the state or concealed himself within the state in order to avoid prosecution.

June 20, 1963

OPINION NO. 226

Honorable Don E. Burrell
Prosecuting Attorney
County of Greene
Springfield, Missouri



Dear Mr. Burrell:

This is in reply to your opinion request of May 21, 1963, in which you state:

"In our county we have a number of misdemeanor cases pending in which the information has been filed immediately after an offense. The problem arises, however, in the fact that our sheriff's office has attempted to locate the defendant and has been unable to serve a warrant within one year after the date of the offense. Our question arises under Section 541.210 RSMo and is as follows:

In order to toll the running of the Statute of Limitations is it necessary that a warrant be served on a defendant within one year from the date of the offense to fall within the scope of, 'Prosecution be Instituted,' requirement of Section 541.210 RSMo?"

Section 541.210, RSMo 1959, requires that a misdemeanor charge must be instituted either by indictment or information within one year after its commission. The language of Section 541.210 is as follows:

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"No person shall be prosecuted, tried or punished for any offense, other than felony, or for any fine or forfeiture, unless the indictment be found or prosecution be instituted within one year after the commission of the offense, or incurring the fine or forfeiture."

The meaning of the phrase "prosecution be instituted" was explained in *State v. Criddle*, 302 Mo. 634, 259 S.W. 429. In this case appellant had been convicted of the misdemeanor of driving an automobile while intoxicated on October 30, 1921. An affidavit had been filed against the defendant on this charge within one year after the act had been committed. However, the information was not filed until March 12, 1923, or more than one year after the commission of the act.

The Missouri Supreme Court reversed the conviction and discharged appellant, and stated at page 430:

"The institution of a criminal prosecution dates from the filing of the information, and not from the date the affidavit was filed in the justice of the peace court. * * * Prosecution of appellant for the misdemeanor * * * was therefore barred by the statute of limitations when the information was filed." (Emphasis ours.)

The phrase "prosecution be instituted" in Section 541.210, RSMo 1959, must mean the date a misdemeanor information is filed against a defendant.

Another statute worthy of attention under the facts stated in your inquiry is Section 541.220, RSMo 1959, which states:

"Nothing contained in sections 541.200 and 541.210 shall avail any person who shall flee from justice; and in all cases, the time during which any defendant shall not have been an inhabitant of or usually resident within this state shall not constitute any part of the limitation prescribed in said sections."

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By virtue of this statute, the one year period of limitations on the filing of a misdemeanor indictment or information is tolled during the period of time the defendant:

- (1) Remains outside of the State of Missouri; State v. Ford, 286 Mo. 624, 228 S.W. 480, 481 [1]; or
- (2) Remains away from his usual place of abode within the State of Missouri for the purpose of avoiding arrest or prosecution; State v. Washburn, 48 Mo. 240; or
- (3) Remains upon his own premises within the State of Missouri, but conceals himself thereon to avoid arrest or prosecution; State v. Miller, 188 Mo. 370, 86 S.W. 484.

In State v. Harvell, 89 Mo. 588, 1 S.W. 837, our Supreme Court construed the language of Section 1706, RSMo 1879 (identical to Section 541.220, RSMo 1959), to apply to the above instances by stating:

"It was not essential that he should have left the state before he could be regarded as a fugitive from justice. One who commits an offense, and conceals himself to avoid arrest, is a fugitive from justice. If he successfully hides or conceals himself, so as to evade punishment for his crime, although such concealment may be upon his own premises, he is as much a fugitive from justice as if he had escaped into Canada."

However, the tolling of the one year limitation under Section 541.220 is immaterial under the facts you state because the information was filed within one year under Section 541.210.

CONCLUSION

1. Under Section 541.210 an information or indictment in a misdemeanor must be filed within one year after the commission of the offense but service of the warrant on the defendant within one year is not required.

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2. Under Section 541.220, RSMo 1959, the one year statute of limitations imposed by Section 541.210, RSMo 1959, is tolled during the period that the defendant has left the state or concealed himself within the state in order to avoid prosecution.

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:bj:jh