

February 25, 1965



Honorable Peter H. Rea
Prosecuting Attorney
Taney County
Forsyth, Missouri

Dear Mr. Rea:

This is in response to your request for an opinion of this office dated January 18, 1965. It appears from your letter that a preliminary hearing was held in Taney County in a first degree murder case. The testimony was reduced to writing by the court reporter pursuant to Section 544.370, RSMo 1959, but the witnesses at the hearing did not sign the transcript as is also required by this section.

The defendant was subsequently bound over to the circuit court and a change of venue was obtained to the Circuit Court of Ozark County where the case is now pending. The preliminary hearing transcript has been sent with the other records in the case to the Circuit Court of Ozark County. No objection has ever been made to the failure to comply with Section 544.370.

Your letter requests advice as to the best procedure for you to follow in the event that the defendant should raise the objection that all proceedings in the Magistrate Court of Taney County were invalidated by the failure to obtain the witnesses' signatures to the transcript.

As we advised you in a telephone conversation of January 25, 1965, the failure to comply with Section 544.370 can best be rectified in this case by having the sheriff obtain the original of the preliminary hearing transcript and delivering it to the various witnesses for their signatures. In a subsequent conversation, you advised us that this was being done.

In the event that any objections should be raised at a later date by the defendant regarding this procedure, we suggest

Honorable Peter H. Rea

-2-

you consult State v. Banton, 342 Mo. 45, 111 S.W. 2d 516, which discusses the requirement that homicide case witnesses sign the transcript of their testimony at the preliminary hearing and reviews the prior cases on the subject. In the Banton case, the court held that the failure to comply strictly with the letter of the statute does not invalidate the proceedings so long as the defendant is not prejudiced thereby. The court further stated that mere irregularities in procedure do not affect the court's jurisdiction so long as there is substantial compliance with the statute.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

JJM:mje