

FOURTH CLASS CITIES:
TRAFFIC OFFENSES:
CITY ORDINANCES:
COMPLAINTS AND INFORMATIONS:

(1) Warrant may be issued on a complaint without information in fourth class city unless offense is traffic offense. (2) Warrant cannot be issued for traffic offense without information in fourth class city. (3) Not necessary for city attorney in fourth class city be present in court in absence of an ordinance.

OPINION NO. 24
135 (1967)

January 23, 1968

Honorable Jack E. Gant
State Senator, 16th District
9517 East 29th Street
Independence, Missouri 64052



Dear Senator Gant:

This is in answer to your request for an opinion from this office as follows:

"1. When a complaint is signed, wither by a police officer or a private citizen seeking the issuance of a warrant by the police judge of a fourth class city, is it necessary that the city attorney or special counsel make an investigation and file an information with the judge prior to the issuance of a warrant by the judge?

"2. Is it necessary that the city of the fourth class have a lawyer present to serve as prosecutor whenever the police judge holds court?"

In substance, your first question is whether a warrant may be issued for the arrest of a person accused in a complaint of violating a city ordinance of a fourth class city before investigation is made by the city attorney and an information filed by him.

The practice and procedure in all municipal courts of this state is governed by Supreme Court Rule 37. Under this Rule different procedures are provided for, for prosecuting persons for traffic violations as distinguished from persons violating other municipal ordinances. We will first consider the Rules governing cases other than traffic cases.

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Supreme Court Rule 37.06 provides:

"All municipal ordinance violations shall be prosecuted by information or complaint, whichever is required by law, in the form and manner hereinafter provided."

Under this Rule a person may be prosecuted for violating a city ordinance on a complaint without a formal information, if it is provided for by law. The question then arises, whether under the law a person violating a municipal ordinance may be prosecuted on a complaint without an information being filed.

Section 98.530, RSMo 1959, which applies to cities of the fourth class, provides:

"All prosecutions for the violation of city ordinances shall be entitled 'The city of _____ against _____' (naming the city and the person or persons charged), and the mayor or police judge shall state in his docket the name of the complainant, the nature and character of the offense, the date of the trial, the names of all witnesses sworn and examined, the finding of the court or jury, the judgment of fine and costs, the date of the payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in each case. The complaint, when made by the marshal or any policeman against any person arrested without process and in custody, shall be reduced to writing and sworn to by such officer before such person shall be put upon his trial. In no case shall a judgment of conviction be rendered except when sufficient legal testimony is given on a public trial or upon a plea of guilty made in open court."

The above statute was construed by the court in City of Richland v. Null, 194 Mo.App. 176, 185 S.W. 250. This statute is in substantially the same language as it was when this case was decided, and the court held that under this statute a warrant could be issued and prosecution had for violation of a city ordinance in a fourth class city on a complaint, without an information being filed.

Supreme Court Rule 37.08 provides:

"A complaint of the commission of an offense, verified by oath or affirmation, may be filed with the judge or court having jurisdiction of the alleged

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offense and if the prosecutor is authorized to prosecute on such complaint without filing an information, or if an information shall be filed thereon by the prosecutor, or without a complaint by the prosecutor, the judge of such court, or the clerk when so authorized by law if a complaint or information is filed by the prosecutor, shall immediately issue a warrant for the arrest of the accused directed to any officer authorized by law to execute it, if such accused has not been taken into custody on summary arrest. The prosecutor shall be promptly informed of any complaint filed whether or not a warrant has been issued thereon. After an investigation, if the prosecutor is satisfied that there are reasonable grounds to believe that an offense has been committed and that a case against the accused can be made, he shall file an information with the judge or court founded upon or accompanied by such complaint, or prosecute such offense on said complaint if authorized by law to prosecute thereon without filing information. All Traffic Cases shall be prosecuted in these Rules as to Traffic Cases." (Emphasis supplied.)

It is the opinion of the department that under the Rules of the Supreme Court and under the law, a warrant may be issued for the arrest of a person on a complaint for violating a municipal ordinance in a fourth class city, without a formal information being filed, unless the offense is a traffic offense; the procedure for which is governed by other Supreme Court Rules as hereinafter discussed.

Supreme Court Rule 37.08, supra, expressly provides that all traffic cases shall be prosecuted by information or complaint in the form provided in these Rules for traffic cases.

Supreme Court Rules 37.46 to 37.50 govern the procedure and practice for traffic court cases.

Supreme Court Rule 37.46 provides that in traffic cases the complaint or information and summons shall be in the form known as the "Uniform Traffic Ticket", substantially as the same is set out in Rule 37.1162. It provides the Uniform Traffic Ticket shall consist of four parts: (1) the complaint or information printed on white paper; (2) the abstract of court record for state licensing authority which shall be a copy of the complaint or information printed on yellow paper; (3) the police record which shall be a copy of the information printed on pink paper; and (4) the summons printed on white color; the reverse side shall be set out in said form with such additions or deletions as are necessary to adapt the Uniform Traffic Ticket to the jurisdiction involved. The notice of appearance, plea of guilty and waiver, shall be printed on the summons.

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The forms for the Uniform Traffic Ticket are set out in Rule 37.1162 and are to consist of four separate sheets of paper as required by Rule 37.46 with certain questions printed thereon with the space for the answers to be filled in by the officer, and for certain information to be recorded thereon of the facts concerning the offense with which the accused is charged. These forms are printed in quadruplicate with the reverse side for each copy for recording certain information thereon, including court proceedings and other information. Space is provided in the forms for the officer to insert in the Summons the court time and place the accused is summonsed to appear. On the reverse side of the "Summons" provision is made for the accused to sign a statement entering his appearance and plea of guilty to the offense as charged "on the complaint [or information]." Attention is called to the fact that provision is made on this form for the accused to enter a plea of guilty to a complaint as well as to an information, if one has been filed.

Supreme Court Rule 37.48, provides in part as follows:

"(a) The court may direct the issuance of a warrant for the arrest of any resident of this state, or any nonresident upon whom process may be served in this state, who fails to appear and answer a traffic ticket or summons lawfully served upon him and against whom an information has been filed by the proper prosecuting attorney or city attorney. Such warrant may be directed to any peace officer of the state and may be executed in any county in this state." (Emphasis supplied)

Under this rule if the accused fails to appear as provided in the summons "and against whom an information has been filed by the prosecuting attorney or city attorney" the court may issue a warrant for arrest. Attention is called to the fact that under this Rule an information must be filed before a warrant for arrest can be issued by the court.

In City of Elvins v. DePriest, 398 S.W.2d 22, the St. Louis Court of Appeals reversed a conviction of a person charged with an improper display of a city auto license on his car, in violation of a city ordinance. The Uniform Traffic Ticket had not been used and no sworn complaint or information had been filed. The prosecution was based on a traffic ticket used by the City of Elvins and merely signed by the city marshal, without oath.

In Kansas City v. Asby, 377 S.W.2d 511, the Kansas City Court of Appeals held that a Uniform Traffic Ticket signed by a police officer for a violation of a city ordinance was not sufficient to

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sustain a conviction, for the reason that a city ordinance of Kansas City requires all prosecutions for ordinance violations to be commenced by filing of an information, signed by the city counselor or his assistant. The court cited that portion of Rule 37.1162 which provides: "Such form to be used as is applicable and in accord with the law of the particular jurisdiction." The court cited City of Kansas v. O'Connor, 36 Mo.App. 594, which held that under the ordinances of the City of Kansas, a warrant for arrest could be issued for a violation of a city ordinance, based on a complaint of any person, but under the ordinances a prosecution may be had only after an information has been filed by the city attorney.

It is our opinion that the above cases must be considered as authority only on the facts existing in the cases, and are not controlling or authoritative on the question now under consideration.

It is the opinion of this office that a warrant for the arrest of a person for violating a municipal traffic ordinance in a fourth class city cannot be issued until after an information has been filed by the city attorney.

In your second question you inquire whether it is necessary for the city attorney in a fourth class city to be present to serve as prosecutor when the police judge holds court.

Section 79.230, RSMo, which applies to cities of the fourth class, provides that the mayor, with the approval of the board of aldermen, shall have power to appoint a city attorney, or employ special counsel.

Section 79.290, RSMo, provides that the duties, powers and privileges of city officers, unless otherwise defined, shall be prescribed by ordinance. There is no statute that defines the powers, duties and authority of a city attorney in a fourth class city.

It is the opinion of this office that in the absence of a city ordinance it is not necessary for the city attorney in a fourth class city be present to serve as prosecutor when the police court is in session.

CONCLUSION

It is the opinion of this office that:

1. Under the law and Rules of the Supreme Court, a warrant may be issued for the arrest of a person on a complaint for violating a municipal ordinance in a fourth class city without formal information being filed, unless the offense charged is a traffic offense.

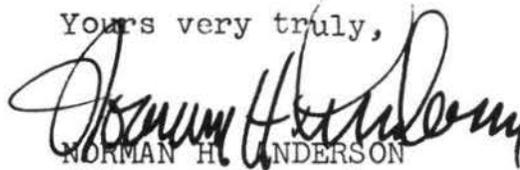
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2. A warrant for the arrest of a person for violating a municipal traffic ordinance in a fourth class city cannot be issued until after an information has been filed.

3. In the absence of a city ordinance it is not necessary for the city attorney in a fourth class city to be present to act as prosecutor when the police court is in session.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,



NORMAN H. ANDERSON
Attorney General