

OPINION REQUEST NO. 40 (1968)  
220 (1967)

ANSWER BY LETTER (McFADDEN)  
January 29, 1968

Hon. Thomas W. Shannon  
Prosecuting Attorney  
Municipal Courts Building  
St. Louis, Missouri



Dear Mr. Shannon:

Your assistant, Allen I. Harris, requested an opinion of this office as follows:

"Section 557.215 RSMo 1965 makes striking an Officer in the performance of his duties a felony. Assuming that the facts would indicate the victim was a police officer, in full uniform, and making a valid arrest, would an indictment on the lesser offense of common assault lie, or does 557.215 preempt the common assault."

Our statutes provide for the inclusion of lesser offenses within greater offenses (556.230 RSMo 1959) so that the charge on any given set of facts may consist of either, depending upon the desires of the particular Prosecutor, see State v. Higgins, 252 S.W. 2d 641.

If the lesser offense is charged, the court before whom it is tried has the discretion of proceeding to a verdict or discharging the jury and referring the matter for trial on the greater crime, Section 556.210 RSMo 1959.

Thus the crime about which you inquire may be tried as either common assault or as the felony named in Section 557.215 RSMo 1967 Cum. Supp.

Because of the unique situation existing in St. Louis where your office is charged with the prosecution of misdemeanors and the Circuit Attorney's Office prosecutes felonies,

Hon. Thomas W. Shannon

Page 2

we suggest that you get together with the Circuit Attorney to work out an understanding as to policy.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General

cc: Hon. James E. Corcoran  
Circuit Attorney  
Municipal Courts Building  
14th and Market Streets  
St. Louis, Missouri