

Answer by Letter (Nowotny)

December 5, 1969

OPINION LETTER NO. 172

Honorable E. J. Cantrell
Representative - 33rd District
3406 Airway
Overland, Missouri 63114



Dear Mr. Cantrell:

This letter is in response to your opinion request in which you ask concerning the authority of law enforcement officers to enter upon private property for the purpose of issuing summons without warrants. Upon further clarification, you advise that your question concerns situations where police officers are going onto private property to issue violations for failure to display city stickers. The provisions concerning such municipal vehicle license taxes are found in Section 301.340, RSMo 1959.

You have not indicated whether or not the situations concern automobiles located on or off private property; and, therefore, we will consider both possible situations.

Assuming that the vehicle is located upon private property, it is our view that it would be an unreasonable search for the officer to enter upon such private property without permission for the purpose of inspecting the vehicle and determining whether or not said vehicle had a city sticker.

In this respect we note that Professor Scurlock in 29 K.C.L.Rev. 1961, p. 242, "Searches and Seizures in Missouri" at p. 299 states:

"The protection of the guarantee against unreasonable searches and seizures is particularly thrown around the dwelling place, whether it is a mansion or a room in a boarding house. The 'curtilage' appears to be likewise protected, but

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premises not within the 'curtilage' do not come within the meaning of the constitutional provisions. No warrant is needed to search fields and other lands not in close proximity of a dwelling."

In *State v. Egan*, 272 S.W.2d 719 (1954) the Springfield Court of Appeals stated at page 724:

"Our Supreme Court long ago pointed out that 'A line of cases also hold that though (defendant) be the owner of the premises searched, still those premises must be within the curtilage, and if they are not they do not come within the meaning of the constitutional provision.' *State v. Fenley*, 309 Mo. 520, 275 S.W. 36, 40(7). 'Curtilage' is defined as 'the inclosed space of ground and buildings immediately surrounding a dwelling house' (*Black's Law Dictionary*, 4th Ed., p. 460) or as 'a yard, courtyard, or piece of ground, included within the fence surrounding a dwelling house' (*Webster's New International Dictionary*, 2nd Ed., p. 649). Like definitions were approved in *State v. Hecox*, 83 Mo. 531, 536. And, although in its proper legal signification it may no longer be necessary that the area be fenced or enclosed (see 10 Words and Phrases, Curtilage, p. 712), curtilage 'is still a right which goes only with a dwelling house as that term is commonly used and understood' . . . "

The protection against unlawful search of course extends only to one having a possessory interest in the place searched. *State v. Askew*, 331 Mo. 684, 56 S.W.2d 52 (1932).

In those instances where the vehicle is located on public property, the officer while passing can readily observe whether or not the vehicle has a city sticker. By checking with his dispatcher, he can then determine whether or not the automobile is registered to a resident of the city. If the officer determines that such automobile does not have a required sticker, may issue a summons which is part of the uniform traffic ticket set out in Supreme Court Rule 37.1162. In our view, it is entirely proper that he then enter upon the premises of the individual and issue the summons to the owner. Once the officer has made a determination

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by personal observation, that a violation of the city ordinance exists, he may follow through to the front door of the dwelling place and issue the summons to the owner of the automobile.

In analyzing the general situation, we wish to make note of several important facts. First of all, we join in the view expressed in the article, "Arrest in Missouri" 29 K.C.L.Rev. 1961, by Professor Scurlock that officers of the different classes of municipalities are permitted by law to arrest for violations of the laws of the municipalities committed in the presence of the officer. The cities to which you refer do permit arrest for violation of municipal ordinances when such violations are committed in the presence of the officer. City auto sticker violations which are observed by the police officer are, in our view, violations committed in his presence and uniform summonses may be issued therefor.

We wish to emphasize, as pointed out by Professor Scurlock at page 172 of the cited article, that a statute purporting to authorize arrest upon mere suspicion would undoubtedly be unconstitutional. The statutes authorize the police officers in Kansas City and St. Louis to arrest for a misdemeanor or ordinance violation, not committed in their presence, provided reasonable grounds are present to find that a violation has been committed. Sections 84.090 and 84.710, RSMo 1959. City of St. Louis v. Simon, 223 S.W.2d 864 (Mo.App. 1949).

As concerns the instant situation however, it appears that, as we stated, when the police officer locates a car, which is required by ordinance to bear a city sticker, and such car does not bear a city sticker, then the violation is in fact committed in his presence and the police officer may issue the uniform traffic summons and is not precluded from calling upon the residence of such individual to serve the summons.

However, the rules of unlawful search still obtain; and a police officer is not entitled to search upon private property in the hopes of finding a violation.

For your further information, we are enclosing Opinion Letter No. 75, dated March 8, 1962, to the Honorable George H. Morgan.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure