

ARREST: Members of the Missouri State Highway Patrol, with the exception of
HIGHWAY PATROL: the director of radio and radio
MOTOR VEHICLES: personnel, are authorized by Sections 43.195 and 564.443, RSMo Supp. 1967, to arrest without a warrant for a misdemeanor not committed in their presence, upon reasonable grounds, for the offenses mentioned in these statutes.

The one and one-half hour limitation imposed by Section 564.443, RSMo Supp. 1967, does apply to arrests for violations of Section 564.440, RSMo Supp. 1967 (driving while intoxicated) but does not apply to arrests for all other motor vehicle law violations under Section 43.195, RSMo Supp. 1967.

OPINION NO. 273

June 26, 1969

Honorable Thomas I. Osborne
Prosecuting Attorney
Audrain County
Mexico, Missouri 65265



Dear Mr. Osborne:

This is in reply to your request for an official opinion of this office concerning the two following related questions, the first reading as follows:

"Can a Missouri State Highway Patrolman arrest without warrant, for a traffic violation committed on the public highways, such as speeding, when the offense was not committed in the patrolman's presence, but was reported to him by a private citizen at a later time and in such detail and manner that the patrolman did have reasonable grounds to believe that an offense had in fact been committed?"

The general power of arrest of a highway patrolman is granted by Section 43.190, RSMo 1959, which reads as follows:

"The members of the patrol, with the exception of the director of radio and radio personnel, are hereby declared to be officers of the state of Missouri and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of this state. The members of the patrol shall have the powers now or hereafter vested by law in peace officers

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except the serving or execution of civil process. The members of the patrol shall have authority to arrest without writ, rule, order or process any person detected by him in the act of violating any law of this state. When a member of the patrol is in pursuit of a violator or suspected violator and is unable to arrest such violator or suspected violator within the limits of the district or territory over which the jurisdiction of such member of the patrol extends, he shall be and is hereby authorized to continue in pursuit of such violator or suspected violator into whatever part of this state may be reasonably necessary to effect the apprehension and arrest of the same and to arrest such violator or suspected violator wherever he may be overtaken."

Thus, a highway patrolman has the same powers generally exercised by peace officers in Missouri. The general rule in Missouri concerning arrest is that where a felony has been committed a peace officer has the right without a warrant to arrest upon information or reasonable ground to believe that the person arrested has committed a crime. *State v. Gartland, Mo., 263 S.W. 165*. A peace officer has no authority at common law to arrest without a warrant for a misdemeanor unless committed in the officer's presence. *Gartland, l.c. 169*. However, a peace officer may be authorized by statute to arrest without a warrant for a misdemeanor not committed in his presence. *Gartland, l.c. 169*.

It is our opinion that Sections 43.195 and 564.443, RSMo Supp. 1967, authorize members of the highway patrol to arrest without a warrant for a misdemeanor not committed in their presence upon reasonable grounds, for the offenses mentioned in these statutes.

Section 43.195 reads as follows:

"Any member of the Missouri state highway patrol may arrest on view, and without a warrant, any person he sees violating or whom he has reasonable grounds to believe has violated any law of this state relating to the operation of motor vehicles."

Section 564.443 reads as follows:

"An arrest without a warrant by a peace officer including a uniformed member of the state highway patrol, for a violation of section 564.440

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is lawful whenever the arresting officer has reasonable grounds to believe that the person to be arrested has violated the section, whether or not the violation occurred in the presence of the arresting officer; provided, however, that any such arrest without warrant must be made within one and one-half hours after such claimed violation occurred."

Section 564.440, RSMo Supp. 1967, reads as follows:

"No person shall operate a motor vehicle while in an intoxicated condition. Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor on conviction for the first two violations thereof, and a felony on conviction for the third and subsequent violations thereof, and, on conviction thereof, be punished as follows:

"(1) For the first offense, by a fine of not less than one hundred dollars or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment;

"(2) For the second offense, by confinement in the county jail for a term of not less than fifteen days and not exceeding one year;

"(3) For the third and subsequent offenses, by confinement in the county jail for a term of not less than ninety days and not more than one year or by imprisonment by the department of corrections for a term of not less than two years and not exceeding five years.

"Evidence of prior convictions shall be heard and determined by the trial court, out of the hearing of the jury, prior to the submission of the case to the jury, and the court shall enter its findings thereon."

Your second question relates to Section 564.443 and reads as follows:

"Also Section 564.443 makes mention of arrest by a patrolman without a warrant for driving while intoxicated, if done within an hour and

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a half of the offense. This might well not be a limitation upon the construction of section 43.195, since 564.443 was enacted in 1963, and section 43.195 was enacted in 1965."

We understand the question to be whether the one and one-half hour limitation applies to both sections, or to neither section, or to either of the two.

It is our opinion that the one and one-half hour limitation does apply to Section 564.443 but does not apply to Section 43.195. This is because Section 564.443 is specific and only applies to violations of Section 564.440 (driving while intoxicated) while Section 43.195 applies to any violation relating to the operation of motor vehicles. Therefore, the rule of statutory construction that a special statute on the same subject controls regardless of the time when a general statute was enacted applies here. *United States v. Hess*, 71 F.2d 78; *State ex rel. Monier v. Crawford*, 303 Mo. 6521, 262 S.W. 341. Accordingly, the one and one-half hour limitation applies to arrests for driving while intoxicated but does not apply to arrests for all other motor vehicle law violations.

CONCLUSION

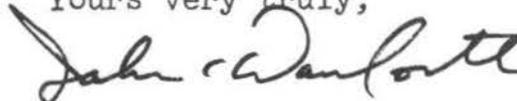
It is the opinion of this office that:

1. Members of the Missouri State Highway Patrol, with the exception of the director of radio and radio personnel, are authorized by Sections 43.195 and 564.443, RSMo Supp. 1967, to arrest without a warrant for a misdemeanor not committed in their presence, upon reasonable grounds, for the offenses mentioned in these statutes.

2. The one and one-half hour limitation imposed by Section 564.443, RSMo Supp. 1967, does apply to arrests for violations of Section 564.440, RSMo Supp. 1967 (driving while intoxicated) but does not apply to arrests for all other motor vehicle law violations under Section 43.195, RSMo Supp. 1967.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Walter W. Nowotny, Jr.

Yours very truly,



JOHN C. DANFORTH
Attorney General