

February 16, 1970

OPINION LETTER NO. 178

Honorable Donald J. Gralike
State Representative
49th District
648 Buckley Road
St. Louis, Missouri 63125



Dear Representative Gralike:

This letter is in response to your opinion request in which you inquire concerning the legality of an order issued by the St. Louis County Police Department. You advise that General Order 4-70, Section 2, under the heading of Regulations states that a police officer shall not discharge firearms at a felony suspect unless the crime for which the arrest is sought involved conduct including the use or threatened use of deadly force.

More specifically, you ask whether such order is in violation of Section 544.190, RSMo 1959, or Paragraph 3, Section 559.040, RSMo 1959.

Section 544.190 states in full:

"If, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest."

Paragraph 3, Section 559.040 with respect to "justifiable homicide" states:

"When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed, or in lawfully suppressing any riot or insurrection, or in lawfully keeping or preserving the peace."

We wish to note at the outset that your question is directed to the validity of the police department regulation; and while it

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is clear that the governing body of St. Louis County and the governing body of the St. Louis County Police Department could not take it upon themselves to define what constitutes "justifiable homicide" in contravention to Section 559.040 or to grant such officers authority in excess of that authorized by Section 544.190, it is nevertheless clear that the police department does have authority to regulate the conduct of its officers.

That is to say, the St. Louis County Charter which was submitted to the voters and approved on April 2, 1968, provides under Section 4.270 that the Board of Police Commissioners shall be in charge of the Department of Police. Section 4.275 of the Charter provides that the Superintendent of Police shall have supervision, management and control of the operation of the Department of Police and all personnel thereof, and that he is responsible to the Board of Police Commissioners.

We conclude that the St. Louis County Police Department does have authority to issue regulations restricting the use of firearms by the personnel of the department and that such regulations do not conflict with the laws cited or any other laws of this state.

Very truly yours,

JOHN C. DANFORTH
Attorney General