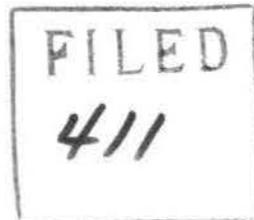


ARREST: A police officer from a fourth class
POLICE: city may arrest for violations of
CITY POLICE: state traffic laws occurring within
CRIMINAL PROCEDURE: the city limits and may file a com-
CITIES, TOWNS & VILLAGES: plaint based upon this violation in
the magistrate court; a police of-
ficer from a fourth class city, possessed of knowledge that a recent
felony has been committed, may arrest without a warrant anyone he has
reasonable grounds to believe has committed the offense; the arrest
for this felony may occur outside the city limits; a police officer
from a fourth class city does not have the power to make an ordinance
violation arrest outside the city limits; and a fourth class city
police chief may not take bond for arrests made without a warrant
for offenses that occur within the city limits.

OPINION NO. 411

October 6, 1970

Honorable Gus Salley
State Representative
District No. 116
P. O. Box 247
Warsaw, Missouri 65355



Dear Representative Salley:

This letter is in response to your opinion request concerning the authority of a police officer of a fourth class city. More specifically, your questions and our responses thereto are as follows:

- "1. Can a Fourth Class Police Officer arrest on State Traffic Violations within the city limits and then file the case directly into the Magistrate Court?"

We note initially that prosecutions before magistrates for misdemeanors are required to be initiated by information only. Supreme Court Rule 21.02. Supreme Court Rule 21.03 requires that the information be filed by the prosecuting attorney, although this information may be prompted by a complaint filed with the magistrate having jurisdiction. Supreme Court Rules 21.04 and 37.46. In the case of Kansas City v. Asby, 377 S.W.2d 511 (K.C.Ct.App. 1964), the court noted that Section 543.020, RSMo 1969, requires that prosecutions before a magistrate for misdemeanors shall be by information and shall be filed before the party or parties accused shall be tried. The court concluded, therefore, that a prosecution for a misdemeanor is not commenced by the filing of a complaint, but begins only upon the filing of an information and that no judicial proceedings are

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commenced by the filing of a police officer's complaint against a misdemeanor.

Thus, if a police officer of a fourth class city filed a complaint in the magistrate court, judicial proceedings against the violator do not commence until the prosecuting attorney files an information based upon his complaint. However, it should be noted that Supreme Court Rule 21.04 obligates the magistrate to transmit the complaint to the prosecuting attorney so that he may determine if filing an information based upon this complaint is warranted under the circumstances.

Also involved in this first question is whether a police officer of a fourth class city has the power to arrest on state traffic violations occurring within the city limits. Applicable is Section 85.610, RSMo 1969, which states:

"The marshal in cities of the fourth class shall be chief of police, and shall have power at all times to make or order an arrest, with proper process, for any offense against the laws of the city or of the state, and to keep the offender in the city prison or other proper place to prevent his escape until a trial can be had before the proper officer, unless such offender shall give a good and sufficient bond for his appearance for trial. The marshal shall also have power to make arrests without process, in all cases in which any offenses against the laws of the city or of the state shall be committed in his presence." (Emphasis added)

This statute is consistent with the common law which held that any peace officer had authority to arrest for a misdemeanor committed in his presence without a warrant. State v. Parker, 378 S.W.2d 274 (Spr.Ct.App. 1964).

Your second question was as follows:

"2. Can a fourth Class Police Officer make an arrest on a felony charge and then file the case himself with the Prosecuting Attorney, or does the Police Officer have to make the arrest, call the sheriff, and then let him take over?"

Again, we call your attention to Section 85.610, RSMo 1969, which specifically permits a police officer in a fourth class city

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". . . to make arrests without process, in all cases in which any offenses against the laws of the city or of the state shall be committed in his presence." In view of this statute, there would be no necessity for the assistance of the sheriff, as the statute clearly enables a police officer to arrest for commission of a felony.

Your third question was as follows:

"3. Can a fourth class police officer, that has seen or has reasons to believe a felony has been committed, be allowed to chase or try to apprehend a car that has left his city limits?"

In the case of State v. Keeny, 431 S.W.2d 95 (Mo. 1968), a city policeman from a third class city was advised by the victim of a robbery as to the description of the robber's automobile and as to its general direction of travel from the scene of the robbery. He sighted a car fitting this description approximately ten miles outside the city limits, and succeeded in getting it to stop. Upon arresting the occupants and searching the automobile, evidence was produced which led to the occupants' conviction for the robbery. In affirming this conviction, the Missouri Supreme Court held:

"This arrest was lawful and this being so, the ensuing search of the automobile as here described, was lawful, as incident thereto. The fact that policeman Grimes was outside his jurisdiction does not make the arrest unlawful under the circumstances before us. A private citizen could lawfully have proceeded as Grimes did. The facts are that there was a robbery; within a few minutes after it occurred, Grimes learned from a reliable source that the perpetrator was a man with a gun who left the scene in a particular style and color car, . . . Within 16 minutes from the time he was first called about the robbery he overtook such a car. . . . Under these circumstances, Grimes had reasonable grounds to believe that the men in the car were the ones who committed the robbery and could lawfully arrest them without warrant, . . ." (Id. at 97)

See also State v. Murray, 445 S.W.2d 296 (Mo. 1969), where an arrest similar to the one occurring in the Keeny case was upheld as valid even though made outside the city limits by a city police officer. Thus, assuming that the police officer has "reasonable grounds to

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believe" a felony has been committed by the person he is pursuing, then he may chase and try to apprehend that person outside the city limits.

Your fourth question was as follows:

"4. Can a fourth class police officer give a traffic ticket to a subject that has committed a driving offense within the city limits, although the officer cannot get the subject stopped until he is two or three blocks out of the city limits?"

In the case of Hacker v. City of Potosi, 351 S.W.2d 760 (Mo. En Banc 1961), the Missouri Supreme Court stated:

"We have held that a police officer of a fourth class city (which Potosi was) has no authority to arrest without a warrant outside the city limits in nonfelony cases. (City of Advance ex rel. Henley v. Maryland Casualty Co., Mo. Supp., 302 S.W.2d 28, and authorities cited; as to arrest with warrant see Sec. 98.540; statutory citations are to RSMo and V.A.M.S.)" (Id. at 761)

The above question is consistent with well settled Missouri law that municipal officers do not have power to make ordinance violation arrests outside city limits. The only statutory exception to this rule, which does not apply in your case, is that hot pursuit of ordinance violators across city lines is permitted in St. Louis County. The statute which permits this exception (Section 544.157, RSMo 1969) is strictly limited to pursuits by peace officers in St. Louis County, however. Thus, no arrest may be made by police officers from a fourth class city outside the city limits for an ordinance violation committed within the city limits. We parenthetically note that this limitation does not prevent the police officer from filing a complaint upon which a summons or warrant for the arrest of the offender may be had, however.

Your fifth question was as follows:

"5. Is a fourth class city police chief that is bonded allowed to take bond on offenses that happened in the city limits?"

We assume that this question refers to arrests made without a warrant. Our examination of Missouri law indicates no statutory authority for the taking of such a bond by such an officer after

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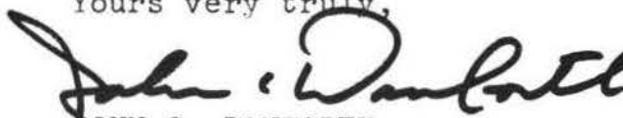
a warrantless arrest. The lack of this authority leads us to conclude that such officer does not have authority to take bonds under these circumstances. We do not pass on the question of the marshal's authority in the event that there is an ordinance purporting to allow the marshal to set and accept such a bond.

CONCLUSION

It is, therefore, the opinion of this office that a police officer from a fourth class city may arrest for violations of state traffic laws occurring within the city limits and may file a complaint based upon this violation in the magistrate court; that a police officer from a fourth class city, possessed of knowledge that a recent felony has been committed, may arrest without a warrant anyone he has reasonable grounds to believe has committed the offense; that the arrest for this felony may occur outside the city limits; that a police officer from a fourth class city does not have the power to make an ordinance violation arrest outside the city limits; and that a fourth class city police chief may not take bond for arrests made without a warrant for offenses that occur within the city limits.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Craig A. Van Matre.

Yours very truly,



JOHN C. DANFORTH
Attorney General