

ARREST:
CRIMINAL PROCEDURE:
PUBLIC RECORDS:

With respect to Sections 6, 7 and
8 of Senate Bill No. 1, 77th General
Assembly, relating to arrest records,
1. The provisions of the first sen-

tence of Section 6 and the provisions of Section 7, relating to the closing of records of arrested persons, apply throughout the state of Missouri. 2. The second sentence of Section 6, relating to expungement of records of arrested persons, applies to all records, wherever maintained, of arrests which take place within the geographical confines of any city or county having a population of five hundred thousand or more. 3. Section 6 of the Act does not require closing of the records of an arrest if that arrest results in any criminal charge against the arrested person within thirty days. 4. Under Section 7 of the Act, official records need not be closed unless all charges arising out of an arrest are subsequently nolle prossed, dismissed, or result in findings of not guilty. 5. Section 7 of the Act requires that official records be closed where the original indictment or information against the accused is dismissed and an information charging the accused with a different offense is subsequently filed, but does not apply where an amended information is filed charging the same offense as previously charged by indictment or information.

OPINION NO. 321

December 10, 1973

Colonel Samuel S. Smith
Superintendent
Missouri State Highway Patrol
1510 East Elm
Jefferson City, Missouri 65101



Dear Colonel Smith:

This opinion is issued in response to your request for a ruling on the following questions pertaining to Sections 6, 7 and 8 of Senate Bill No. 1, 77th General Assembly (1973):

"1. Does the act apply to all arresting agencies in the state with respect to closing of records in Section 6 and 7, or to those in 'any city or county having a population of 500,000 or more'?

"2. Does the language 'in any city or county having a population of 500,000 or more' refer to records of all agencies physically located in such city or county, all records of arrests

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which take place in such city or county (wherever such records may be kept), or merely to records of arrests by such city's or county's own law enforcement agencies?

"3. If a person is arrested for more than one alleged offense, but he is only charged with one offense, does Section 6 require that the records of that arrest be closed insofar as they pertain to the offenses for which there are no charges?

"4. If a single arrest results in more than one charge being filed, but one such charge is subsequently nolle prossed, dismissed, or results in a finding of not guilty in the court in which the action is prosecuted, must official records pertaining to any or all of the charges be closed?

"5. Does the word 'dismissed' in Section 7 apply to situations in which a person is charged by one indictment or information, but another information is later substituted for the original charge (either for the same or a different offense)?"

The statute in question reads, in pertinent part, as follows:

"Section 6. If any person is arrested and not charged with an offense against the law within thirty days of his arrest, all records of the arrest and of any detention or confinement incident thereto shall thereafter be closed records to all persons except the person arrested. If there is no conviction within one year after the records are closed, all records of the arrest and of any detention or confinement incident thereto shall be expunged in any city or county having a population of five hundred thousand or more.

"Section 7. If the person arrested is charged but the case is subsequently nolle prossed, dismissed or the accused is found not guilty in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records to all persons except the person arrested or charged,

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"Section 8. No person as to whom such records have become closed records or as to whom such records have been expunged shall thereafter under any provision of law be held to be guilty of perjury or otherwise of giving a false statement by reason of his failure to recite or acknowledge such arrest or trial in response to any inquiry made of him for any purpose."

We answer your questions in the order in which you have asked them:

1.

It is clear that the second sentence of Section 6 of the Act, relating to expungement of arrest records when no conviction has taken place within one year after such records have been closed, applies only "in any city or county having a population of five hundred thousand or more." However, we believe that the first sentence of Section 6, requiring the closing of arrest records where an arrested person is not charged with an offense within thirty days of arrest, and the provisions of Section 7, requiring the closing of records where a person is arrested and charged but the case subsequently nolle prossed, dismissed, or the accused found not guilty in the court in which the action is prosecuted, apply throughout the state of Missouri.

We reach this conclusion from the manner in which Section 6 is phrased. The words "in any city or county having a population of five hundred thousand or more" appear only in the last sentence of that section. We believe that the only fair construction of this syntax is that the clause applies only to the subject matter of the sentence in which it does appear. This conclusion is strengthened by the fact that the expungement provision of the second sentence of Section 6 applies only to records which have already been closed under the self-sufficient language of the first sentence. And Section 7 makes no mention at all of "any city or county having a population of five hundred thousand or more", nor does it make any reference to the provisions of Section 6. Furthermore, we would point out that Senate Bill No. 1, taken as a whole, does not purport to apply only to cities or counties having a population of five hundred thousand or more.

In Missouri Public Service Company v. Platte-Clay Electric Cooperative, Inc., 407 S.W.2d 883, 891 (Mo. 1966), it was stated that:

". . . 'Provisions not found plainly written or necessarily implied from what is written

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"will not be imported or interpolated therein in order that the existence of [a] right may be made to appear when otherwise, upon the face of [the statutes], it would not appear." Allen v. St. Louis-San Francisco Ry. Co., 338 Mo. 395, 402, 90 S.W.2d 1050, 1053, 105 A.L.R. 1222, cited with approval in State ex rel. Mills v. Allen, 344 Mo. 743, 128 S.W.2d 1040, 1043.' . . . We are enjoined by § 1.090 to take words and phrases in their plain or ordinary and usual sense. In Marty v. State Tax Commission of Missouri, Mo.Sup., 336 S.W.2d 696, we approved the rule that the legislative intent should be ascertained from the words used, if possible, and that the plain and rational meaning of language should be ascribed to it. . . . 'We are guided by what the legislature says, and not by what we may think it meant to say.' United Air Lines, Inc. v. State Tax Commission, Mo.Sup., 377 S.W.2d 444, 448."

Under these principles, we are unable to conclude that the legislature intended the first sentence of Section 6 or the provisions of Section 7 of the Act to apply only to any city or county having a population of five hundred thousand or more. Rather, they apply generally throughout Missouri.

2.

To determine the legislature's intent in the second sentence of Section 6 of the Act, where appear the words "all records of the arrest and of any detention or confinement incident thereto shall be expunged in any city or county having a population of five hundred thousand or more", we would refer to the general principles of statutory construction stated in Graves v. Little Tarkio Drainage Dist. No. 1, 134 S.W.2d 70, 78 (Mo. 1939):

". . . 'It is an elementary and cardinal rule of construction that effect must be given, if possible, to every word, clause, sentence, paragraph, and section of a statute, and a statute should be so construed that effect may be given to all its provisions, so that no part, or section, will be inoperative, superfluous, contradictory, or conflicting, and so that one section, or part, will not destroy another. Sutherland on Statutory Construction (2d Ed.) 731, 732, § 380. Moreover, it is presumed that the Legislature

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intended every part and section of such a statute, or law, to have effect and to be operative, and did not intend any part or section of such statute to be without meaning or effect.' . . ."

We do not believe that the language of the Act requires expungement only of records maintained by agencies of the municipal entities mentioned specifically in the statute: "any city or county having a population of five hundred thousand or more". Had the statute said that the records shall be expunged "by" any such city or county, our conclusion might be different. The word "in", however, implies that the scope of the provision is geographical.

It should be evident that many records of arrests which take place geographically within the limits of such cities or counties, and many arrest records which are physically maintained within the geographical boundaries of such cities or counties, will not be the records of agencies of such cities or counties. State agencies, such as the State Highway Patrol, may possess such records, as may agencies of municipalities which are physically located in counties of more than five hundred thousand population but which do not have a population of five hundred thousand themselves. Frequently arrest records will be maintained both by agencies of a city or county having a population of five hundred thousand and by agencies of other governmental entities. It would be superfluous and contradictory to require that some of these agencies expunge their records, while others are not required to do so, and we do not attribute such an intention to the legislature. In the absence of clear legislative prescription, we are unable to conclude that the expungement requirement applies only to agencies of "any city or county having a population of five hundred thousand or more." The plain meaning of the words of the statute implies a geographical application, not one based upon the nature of the governmental entity possessing the records.

There are two possible interpretations of the language in question. Either all arrest records physically maintained "in any city or county having a population of five hundred thousand or more" are subject to expungement--wherever the arrests took place--or else all records of arrests which took place "in any city or county having a population of five hundred thousand or more" are subject to expungement--wherever the records may be maintained within the state of Missouri. We believe the latter is the correct interpretation.

If an arrest takes place outside a city or county having a population of five hundred thousand or more, some records of it

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will certainly exist in the locality where the arrest was made. But the statute would be superfluous if it required records of such an arrest to be expunged only within a city or county having a population of five hundred thousand or more, without authorizing their expungement elsewhere. On the other hand, no such contradiction will arise if the statute authorizes expungement of all records of the arrests which its provisions comprehend.

We must conclude that the legislature intended the statutory provision to have a consistent and not a contradictory meaning. We conclude, therefore, that all records of arrests which take place in any city or county having a population of five hundred thousand or more are subject to expungement, regardless of where or by what agency they may be maintained in the state of Missouri.

3.

The first sentence of Section 6 of the Act requires closing of records of "arrests and of any detention or confinement incident thereto" only if the arrested person is "not charged with an offense against the law within thirty days of his arrest." The term "an offense" would appear to refer to any offense. We note that the records to be closed are described in terms of the arrest and detention, not the reasons which may underlie the arrest. See our Opinion No. 299, issued September 28, 1973, to Theodore D. McNeal and Curtis Brostron, a copy of which is attached hereto.

4.

We note that Senate Bill No. 1 does not define the term "the case" which it employs in Section 7 to refer to situations where a person has been arrested and charged. "Case" has been defined in various ways, depending on its context. The definition which appears most appropriate in the context of Section 7 of the Act was quoted from Black's Law Dictionary in Barnett v. Pemiscot County Court, 86 S.W. 575, 576 (St.L.Ct.App. 1905): ". . . It imports a state of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice. In its generic sense, the word includes all causes, special or otherwise.' . . ." A similar definition was set forth in Hancock v. Schroering, 481 S.W.2d 57, 60 (Ky. 1972): ". . . 'a set of circumstances or conditions' or 'a situation requiring investigation or action by the police or other agency,' or 'the object of investigation or consideration.' . . ."

The term "charged" as used in Section 7 appears to have the same meaning as in Section 6. As we indicated above, the phrase "charged with an offense against the law" in Section 6 refers to a charge for any offense. Thus, "charged" in Section 7 would seem

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to refer to whatever offense or offenses had been charged; and "the case" would seem to indicate the entire range of criminal proceedings arising from the arrest. Moreover, we would point out Section 1.030, subsection 2, RSMo 1969, which provides that "When any subject matter, . . . is described or referred to by words importing the singular number . . . several matters . . . are included." Therefore, the terms "the case" and "the action" in Section 7 need not refer only to a single, continuous legal proceeding.

It would be futile to attempt to close records pertaining to one charge, while records pertaining to other charges which arose out of the same arrest did not have to be closed. Such records would likely be inextricably intertwined, if not actually identical. Therefore, we do not believe that the legislature intended Section 7 to require closing of records until all the charges which made up "the case" arising out of an arrest were resolved favorably to the arrested person by being nolle prossed, dismissed, or concluded by a finding of not guilty in the court in which the criminal charges were prosecuted.

5.

Your last question requires consideration of Section 545.300, RSMo 1969, which states as follows:

"An information may be amended either as to form or substance at any time before the jury is sworn, but no such amendment shall be allowed as would operate to charge an offense different from that charged or attempted to be charged in the original information. If an indictment be held to be insufficient either as to form or substance, an information charging the same offense charged or attempted to be charged in such indictment may be substituted therefor at any time before the jury is sworn. No amendment of the information or substitution of an information for an indictment as herein provided shall cause a delay of the trial unless the defendant shall satisfy the court that such amendment or substitution has made it necessary that he have additional time in which to prepare his defense." (Emphasis added)

This statute clearly forbids the filing of a substitute information which would charge a different offense from that charged in the original indictment or information. It frequently occurs that

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a defendant will plead guilty to a lesser offense than that charged against him by indictment or information, and a new information, to which the defendant will plead guilty, is "substituted" for the original charge, for purposes of the plea. However, it is our opinion that, under Section 545.300, such a procedure must be regarded as a dismissal or a nolle prosequi within the meaning of Section 7 of the Act, because it is not a continuation of the same proceedings begun by the original indictment or information. ". . . 'Dismissal signifies the final end of a suit, not a final judgment on the controversy, but an end of that proceeding.' 18 C.J. 1145. . . ." Cooper v. Associated Laundries, 83 S.W.2d 591, 592 (K.C.Ct.App. 1935). But court records of a plea of guilty to such reduced charges would not be closed under Section 7. (And those records which are closed under Section 7 remain available to law enforcement agencies for purposes of further litigation, if the defendant does not plead guilty to the new charge. See our Opinion No. 311, issued November 30, 1973, to Ralph L. Martin, copy of which is attached hereto).

However, Section 545.300 does contemplate the filing of amended informations which do not charge different offenses from those originally charged by indictment or information. It is our opinion that the filing of such an amended information does not, per se, constitute a dismissal within the meaning of Section 7 of Senate Bill No. 1.

CONCLUSION

Therefore, it is the opinion of this office with respect to Sections 6, 7 and 8 of Senate Bill No. 1, 77th General Assembly, relating to arrest records, that:

1. The provisions of the first sentence of Section 6 and the provisions of Section 7, relating to the closing of records of arrested persons, apply throughout the state of Missouri.
2. The second sentence of Section 6, relating to expungement of records of arrested persons, applies to all records, wherever maintained, of arrests which take place within the geographical confines of any city or county having a population of five hundred thousand or more.
3. Section 6 of the Act does not require closing of the records of an arrest if that arrest results in any criminal charge against the arrested person within thirty days.
4. Under Section 7 of the Act, official records need not be closed unless all charges arising out of an arrest are subsequently nolle prossed, dismissed, or result in findings of not guilty.

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5. Section 7 of the Act requires that official records be closed where the original indictment or information against the accused is dismissed and an information charging the accused with a different offense is subsequently filed, but does not apply where an amended information is filed charging the same offense as previously charged by indictment or information.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 299
9/28/73, McNeal

Op. No. 311
11/30/73, Martin