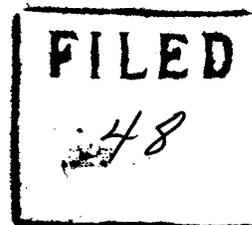


CRIMINAL PROCEEDINGS: The time limits prescribed in Section
CRIMINAL PROCEDURE: 545.780, RSMo 1978, (1) do not apply
CRIMINAL LAW: to felony cases pending in associate
INFORMATIONS: circuit court awaiting preliminary
INDICTMENTS: hearings, (2) do apply to misdemeanor
ARRAIGNMENT: cases pending in associate circuit
apply to ordinance violations where convictions have been obtained
in the city's municipal court and thereafter appealed to associate
circuit court.

April 27, 1982

OPINION NO. 48

The Honorable David A. Geisler
Prosecuting Attorney
Greene County Courthouse
Springfield, Missouri 65802



Dear Mr. Geisler:

This opinion is in response to your question asking:

Whether the time limitations set forth in
545.780, RSMo are applicable to:

- (1) Felony cases pending in Associate Circuit
Court awaiting preliminary hearings
- (2) Misdemeanor cases pending in Associate
Circuit Court awaiting trial
- (3) Ordinance violations where convictions
have been obtained in the city's municip-
al court and thereafter appealed to
Associate Circuit Court.

Section 545.780,¹ establishes certain time limitations relating
to criminal prosecutions. In relevant part, that section provides:

¹All statutory references herein are to RSMo 1978.

The Honorable David A. Geisler

1. The arraignment of a defendant charged in an information or indictment with the commission of an offense shall be held within ten days from the filing of the information or the making public of the indictment.

2. When a plea of not guilty is entered at an arraignment the trial shall commence within one hundred eighty days of arraignment.

We answer part (1) of your question in the negative. We believe it is clear that as to a defendant charged in an information with the commission of an offense, the provisions of Section 545.780 are not operative until the filing of the information. In felony cases, no information shall be filed until after the accused is accorded the right of a preliminary hearing in associate circuit court. Section 544.250. Since the preliminary hearing must precede the filing of a felony information, the time limitations imposed under Section 545.780 do not apply to felony cases awaiting preliminary hearing.

Part (2) of your question is answered in the affirmative. Section 545.780 applies whenever a defendant is charged with the commission of an offense. Section 556.061(18) defines "offense" as "any felony, misdemeanor or infraction." Thus, whenever an information has been filed or an indictment returned in a misdemeanor case, an arraignment must be held within ten days and the trial must commence within 180 days of arraignment.

We answer part (3) of your question in the negative. Section 479.200 gives a defendant tried before a municipal judge the right to a trial de novo before a circuit judge or associate circuit judge. Whether the time limits in Section 545.780 apply to a trial de novo in associate circuit court of a municipal ordinance violation depends upon whether such violation is an "offense" as contemplated in Section 545.780.

An infraction is defined in Section 556.021.1 as "[a]n offense defined by this code or by any other statute of this state. . . ." Since violations of municipal ordinances are defined by those ordinances, and not by any statute of the State of Missouri, they are not infractions within the meaning of Section 556.021.1 nor are they felonies or misdemeanors. Therefore, such violations are not "offenses" within the meaning of Section 545.780.

The Honorable David A. Geisler

CONCLUSION

It is the opinion of this office that the time limits prescribed in Section 545.780, RSMo 1978, (1) do not apply to felony cases pending in associate circuit court awaiting preliminary hearings, (2) do apply to misdemeanor cases pending in associate circuit court awaiting trial, and (3) do not apply to ordinance violations where convictions have been obtained in the city's municipal court and thereafter appealed to associate circuit court.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Jay D. Haden.

Very truly yours,



JOHN ASHCROFT
Attorney General