ARREST:
BAIL BOND:
BAIL
TWENTY HOUR LAW: One who has made bond under the provisions of Supreme Court Rule 21.14 to appear and answer to any charge that may be preferred against him may thereafter be subject to arrest for an offense entirely disconnected from the offense or offenses for which he was first arrested. This is true whether the offense for which the second arrest occurs was committed before or after the giving of such bond.

January 22,1960

FILED
2

Honorable Norman H. Anderson
Prosecuting Attorney
St. Louis County
Clayton, Missouri

Dear Mr. Anderson:

You have recently requested an opinion from this office concerning the following matter:

> "When a defendant is arrested on a specific offense and prior to the filing of a formal complaint is released on an appearance bond, can such defendant then be arrested prior to the return date of the appearance bond for a different crime unrelated entirely to the original arrest if (a) the subsequent arrest was for a crime committed prior to the issuance of the appearance bond, and (b) the subsequent arrest was for a crime committed subsequent to the issuance of the appearance bond?"

The right to bail is provided for in the Constitution of Missouri in Article I, Section 20, which reads as follows:

> "That all persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great."

Honorable Norman H. Anderson

Supreme Court Rule 21.14 concerns those who are arrested without warrant and limits their detention to a period of 20 hours. This rule provides that one so arrested is entitled to make bail. It reads as follows:

> "All persons arrested and held in custody by any peace officer, without warrant, for the alleged commission of a criminal offense, or on suspicion thereof, shall be discharged from such custody within twenty hours from the time of arrest, unless they be held upon a warrant issued subsequent to such arrest. While so held in custody, every such person shall be permitted to consult with counsel or other persons in his behalf. If the offense for which such person is held in custody is bailable and the person held so requests, he shall be entitled to be admitted to bail in an amount deemed sufficient by a judge or magistrate of a court of such county or of the City of St.Louis having original jurisdiction to try criminal offenses. Such admission to bail shall be governed by all applicable provisions of these Rules. The condition of the bail bond shall be that the person so admitted to bail will appear at a time and place stipulated therein (which shall be a court having appropriate jurisdiction) and from time to time as required by the court in which such bond is returnable, to answer to a complaint, indictment or information charging such offense as may be preferred against him."

Thus, it appears that your question concerns an individual who has been arrested without a warrant and who makes bond during the 20 hour period, which bond is conditioned according to the provisions of Rule 21.14 that he will appear before the court at the time desig-

nated "to answer to a complaint, indictment or information charging such offense as may be preferred against him." It is this broad condition that he will answer to such charge "as may be preferred against him" which creates the problem. In the normal situation, the individual gives bond to answer to a specific charge and, of course, is subject to arrest on any other charge or for any other offense the same as one who is not under bond. It is normally held that one who has made bond is not subject to be again arrested for the same charge (except as is provided where the bond is found to be inadequate or in other similar circumstances). See United States v. Gordon, 190 F. 2d 16, l.c.19.

However, in the instant case the individual who makes the bond has not been charged with a specific offense and by making the bond he agrees to appear and answer any charge that may be preferred against him. Thus, the question arises as to whether he has, by making the bond, agreed to answer for any and all offenses that he may have committed in the past or only those which grow out of or are connected with the offense or offenses for which he was arrested. It is submitted that the latter construction is the only one which is feasible. From a reading of Rule 21.14 as quoted above, it is apparent that the framers of this rule were considering the problem in light of an arrest for one specific offense. Of course, for the arrest to be legal, the arrest must be made for a specific offense or offenses which the arresting officer has reasonable grounds to believe that the person has committed. The rule provides that the arrested person may make bail only if the offense for which he is held is bailable (under the provisions of Article I, Section 20, of the Constitution). Thus, the court must determine the bailability of the offense or offenses by reference to the specific offense or offenses (and perhaps by the surrounding circumstances) for which the individual is held in custody. Furthermore, in setting the amount of bond, the court must, of course, take into consideration the nature of the offense or offenses for which the individual has been arrested. Thus, the whole context of Rule 21.14 is directed toward a specific offense or offenses, and it is only when this rule provides for the condition of the bond that language is used which

could be interpreted to include offenses for which the individual is not under arrest. It is submitted that this broad language is used for the purpose of giving leeway to the prosecuting officials when framing the formal charge to be preferred against the person who has been arrested without a warrant. For example, one may be arrested in connection with an offense which, prior to the new stealing statute, might have been larceny or might have been embezzlement. Under this rule a precise determination of the technical charge to be preferred is not required when the person arrested is released on bond before the expiration of the 20 hour limit.

As has been pointed out in our previous opinion to you dated August 18, 1959, an individual is required to post only one bond to secure his release (within the 20 hour limit) from arrest without a warrant, however, we believe that it would be unreasonable to hold that this one bond would cover offenses for which he was not under arrest, no matter when they were committed and which are entirely disconnected from and have no relation to the offense or offenses for which the individual is arrested.

An extensive search has revealed no case in this or any other jurisdiction wherein a similar situation was considered. However, it is believed that the discussion of the court in Ex parte Vogler, 110 Texas Criminal Reports 579, 9 S.W. 2d 733, 62 A.L.R. 456, may be appropriate. The court said, l.c. 62 A.L.R. 461:

> "We have examined the authorities cited in the motion as well as others, and have found none on facts such as those before us, or on facts demanding the application of any analogous principle, which hold that one on bond in a pending habeas corpus case, who has theretofore or does thereafter violate the law in such manner as that the question of the violation vel non is not involved in, or connected with, or affected by the matters at issue in the pending habeas corpus hearing, may not be properly

> arrested by an officer merely because he knows of the pending proceeding. Such holding in our opinion, would be little short of monstrous. To hold that one merely detained by health officers, and who may be at large on bail pending a habeas corpus hearing set weeks later, is thereby privileged from arrest for murders committed, thefts perpetrated, ravishments done, or any other violation of law, merely because the arresting officer had knowledge of such pending habeas corpus proceeding would make for incredible confusion and disorder. If the contention thus made be sustained, then habeas corpus writs might be sued out, and that fact published, so that all officers would have knowledge thereof, and the hearing thereon might be purposely delayed, and bond made so that forsooth the parties might thereafter commit wholesale crime, extending over a period of time, and be privileged from arrest."

We likewise believe that one arrested without a warrant and who makes bond within the 20 hour period is not thereby rendered immune from arrest for other crimes entirely disconnected from the crime or crimes for which he was arrested. For example, one might be arrested for a misdemeanor and be released by the court on a relatively small bond and thereafter the officials might discover that there was reasonable grounds to believe that he had committed rape, murder, or other serious crimes which, in fact, might not be bailable under our Constitution. It would, we believe, be inconceivable that the making of the bond for a misdemeanor would insulate such an individual from arrest for such serious offenses. While the wording of the rule does state that the bond will require the person to appear and answer any charge that may be preferred against him, it is believed that the scope of this language must be limited by the tenor and context of the rule and that, in fact, by making bond he only promises to appear and answer to the charge or charges that may be preferred against him growing

out of the occurrence or occurrences for which he was arrested. We do not believe that it was the intention of the Supreme Court of Missouri when this rule was promulgated to so insulate one who has made bond under Rule 21.14 from what would otherwise be lawful arrest on charges which have absolutely no connection with the offense or offenses for which the individual was arrested.

It is desired to emphasize that such arrest of one who is on bond under Rule 21.14 can legally occur only where the second arrest is for an offense or offenses that are entirely disconnected from and have absolutely no relation to the offense or offenses for which the individual was previously arrested, and on which he has made bond conditioned that he will appear and answer the charge or charges that the prosecuting officials determine to be proper.

You have also inquired as to the propriety of an arrest for an offense which occurred after the individual was arrested and made bond. In view of the above, it follows that such arrest would not be prevented by the fact that the individual has made bond concerning some prior occurrence. The theory of bail is not adaptable to a promise today to appear to answer charges for offenses that may be committed in the future.

CONCLUSION

It is, therefore, the conclusion of this office that one who has made bond under the provisions of Supreme Court Rule 21.14 to appear and answer to any charge that may be preferred against him may thereafter be subject to arrest for an offense entirely disconnected from the offense or offenses for which he was first arrested. This is true whether the offense for which the second arrest occurs was committed before or after the giving of such bond.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Fred L. Howard.

Yours very truly,

John M. Dalton
Attorney General

FLH:mc:lc