HIGH PATROL--CONSTABLES--JUSTICES OF THE PEACE: Constables and their deputies have police jurisdiction over the whole county. Highway Patrolmen are not vested with exclusive jurisdiction of policing State Highways to the exclusion of other peace officers.

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May 28, 1935

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Hon. B. M. Casteel,
Supt., Missouri State Highway Patrol,
Jefferson City, Missouri.

Dear Sir:

This Department acknowledges receipt of your letter and enclosure of May 22, 1935.

Your letter states in part as follows:

> "I am inclosing you letter I have received from the Commanding Officer of Troop 'C', relative to an opinion to be rendered by your Department.
>
> "I will appreciate it very much if we could have this at an early date,- due to the fact that matters of this kind are continually coming up through-out the State."

Your enclosure is too lengthy to set out in full and hence we take the liberty of setting out the substance therein contained.

Complaint is made of the practice of maintaining speed traps, particularly in St. Louis County, although it is stated that they are now spreading outside of St. Louis County. It is complained that the net result of such practice has been the slowing down of traffic, the increasing of hazards on the highways, and the un-doing of the results of the efforts of the Missouri State Highway Patrol in educating and regulating the traffic on the highways. It is alleged that the only possible profit to anyone has been the added fees which come into the hands

of certain "Constables and their fee-grabbing Justices". The question is raised whether the Act creating the Missouri State Highway Patrol "vests the exclusive jurisdiction of policing, on highways constructed and maintained by the State Highway Commission, and the regulating of the movement of traffic thereon, in the State Highway Patrol, to the exclusion of all other officers." Another question raised is whether constables and their deputies are limited to their respective townships in making arrests for violations of the law, or whether their powers and duties extend over the entire county.

I.

CONSTABLES AND THEIR DEPUTIES ARE NOT LIMITED TO THEIR RESPECTIVE TOWNSHIPS IN MAKING ARRESTS FOR VIOLATIONS OF LAW. THEIR POWERS AND DUTIES EXTEND OVER THE ENTIRE COUNTY.

Section 11756, R. S. Mo. 1929, sets out the general powers and duties of a constable, as follows:

> "Constables may serve warrants, writs of attachments, subpoenas and all other process, both civil and criminal, and exercise all other authority conferred upon them by law throughout their respective counties."

In the case of Huhn v. Lang, 122 Mo. 600, l. c. 606, the court said:

> "The duties and powers of the constable within the jurisdiction of a justice are identical with those of a sheriff * * *."

Section 11516, R. S. Mo. 1929, sets out the duties of sheriffs in part as follows:

> "Every sheriff shall be a conservator of the peace within his county * * *."

In the case of Jones v. State, (Tex.) 65 S. W. 92, the court defines the terms "conservators of the peace" and "peace officers" thus:

> "According to the dictionaries, a conservator is a preserver or maintainer. See 1 Rap. Law Dict.; Cent. Dict. A conservator of the peace is an officer authorized to preserve or maintain the public peace. Id. It would therefore seem to follow that one who is authorized to preserve or maintain the public peace is a peace officer."

The question is raised whether constables and their deputies are limited to their respective townships in making arrests for violations of the law, or whether their powers and duties extend over the entire county.

In the case of The State v. Pollock, 49 Mo. App. 445, l. c. 447, the court said:

> "It was stated at the argument that the exclusion of evidence showing defendant's official character was on the ground that he was not in the township of which he was constable. This is not a sufficient objection. He was in the county in which his township was located, and as such officer he had powers and duties over the entire county. R. S. 1889, sec. 2380" (now sec. 11756, R. S. Mo. 1929, supra).

It is evident from the foregoing that constables and their deputies are conservators of the peace or peace officers and as such are charged with the duty of enforcing all laws within their respective counties.

II.

ACT CREATING MISSOURI STATE HIGHWAY PATROL DOES NOT VEST EXCLUSIVE JURISDICTION OF POLICING STATE HIGHWAYS IN THE STATE HIGHWAY PATROL, TO THE EXCLUSION OF OTHER PEACE OFFICERS.

Section 1 of the 1931 Session Acts, page 231, creates the "Missouri state highway patrol" and provides in part as follows:

> " * * * but the powers and duties hereby conferred on the members of such patrol shall be supplementary to and in no way a limitation on the powers and duties of sheriffs, police officers, or other peace officers of this state."

Section 12 of the same Act provides:

> "It shall be the duty of the patrol to police the highways constructed and maintained by the commission; to regulate the movement of traffic thereon; to enforce thereon the laws of this state relating to the operation and use of vehicles on the highways; to enforce and prevent thereon the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed to protect and safeguard the highways constructed and maintained by the commission. It shall be the duty of the patrol whenever possible to determine persons causing or responsible for the breaking, damaging or destruction of any improved hard surfaced roadway, structure, sign markers, guard rail or any other appurtenance constructed or maintained by the commission and to arrest persons criminally responsible therefor and to bring them before the

> proper officials for prosecution. It shall be the duty of the patrol to cooperate with the secretary of state and the motor vehicle commissioner in the collection of motor vehicle registration fees and operators and chauffeurs licenses and to cooperate with the state inspector of oils in the collection of motor vehicle fuel taxes."

The question is raised whether Section 12, supra, "vests the exclusive jurisdiction of policing, on highways constructed and maintained by the State Highway Commission, and the regulating of the movement of traffic thereon, in the State Highway Patrol, to the exclusion of all other officers."

In the case of Gendron v. Dwight Chapin & Co., 37 S. W. (2d) 486, l. c. 488, 225 Mo. App. 466, the court said:

> "In construing the act, we are bound to ascertain and give effect to the intention of the Legislature as expressed in the statute, and, where the meaning of the language used is plain, it must be given effect by the courts (Betz v. Kansas City So. Ry. Co., 314 Mo. 390, 284 S. W. 455, 461; Grier v. Ry. Co., 286 Mo. loc. cit. 534, 228 S. W. loc. cit. 457; Sleyster v. E. Donzelot & Son (Mo. App.) 25 S. W. (2d) loc. cit. 148), and this without regard to the results of the construction or the wisdom of the law as thus construed (State ex rel. v. Wilder, 206 Mo. 541, 105 S. W. 272), and we have no right, by construction, to substitute any ideas concerning legislative intent contrary to those unmistakably expressed in the legislative words (Clark v. Railroad Co., 219 Mo. loc. cit. 534, 118 S. W. loc. cit. 44)."

Section 1, supra, of the Act creating the Missouri State Highway Patrol provides in clear and unambiguous

language that the powers and duties conferred on members of the patrol are supplementary to and in no way a limitation on the powers and duties of sheriffs, police officers, or other peace officers of this state.

From the foregoing, we are of the opinion that the Act creating the State Highway Patrol does not vest the exclusive jurisdiction of policing, on state highways, and the regulating of the movement of traffic thereon, in the State Highway Patrol, to the exclusion of all other officers. We realize the need of curbing speed traps and the evils which attend such practice. However, as our courts have repeatedly held, we have no right, by construction, to substitute any ideas concerning legislative intent contrary to those unmistakably expressed in the legislative words.

## III.

PROSECUTIONS BEFORE JUSTICES OF THE PEACE FOR MISDEMEANORS MUST BE BY INFORMATION MADE BY THE PROSECUTING ATTORNEY OF THE COUNTY IN WHICH THE OFFENSE MAY BE PROSECUTED, OTHERWISE JUSTICES SUBJECT TO OUSTER.

Until the Legislature enacts such laws as are necessary to prohibit such practice, some remedy may be afforded in seeing to it that the following procedure is carried out in proceedings before justices of the peace in the case of misdemeanors.

Section 3414, R. S. Mo. 1929, provides as follows:

> "Justices of the peace shall have concurrent original jurisdiction with the circuit court, coextensive with their respective counties in all cases of misdemeanor, except in cities having courts exercising exclusive jurisdiction in criminal cases, or as otherwise provided

> by law: Provided, that all prosecutions before justices of the peace for misdemeanor shall be commenced and prosecuted in the township wherein the offense is alleged to have been committed: Provided further, that nothing herein contained shall prevent the defendant from taking a change of venue, as provided for in this article."

In the case of State v. Alford, 142 Mo. App. 412, l. c. 415, 127 S. W. 109, the court in construing the above section, said:

> "The information charges that the offense was committed in Jobe township, and the prosecution was commenced before George W. Johnson, a justice of the peace of Johnson township. Section 2748 of the Revised Statutes 1899, as amended by the act of the Legislature in 1907, reads: 'Provided, that all prosecutions before justices of the peace for misdemeanor shall be commenced and prosecuted in the township wherein the offense is alleged to have been committed'.
>
> "We had occasion to pass on this statute in State of Missouri v. Grant Sexton, at the last term of this court, and we there held that in order to give jurisdiction in a misdemanor prosecuted before a justice of the peace, that the prosecution must be instituted before some justice of the peace in the township where it is claimed the offense was committed. It is a general rule that the justice of the peace has only such jurisdiction as the statute confers upon him, and that the facts giving such jurisdiction must affirmatively appear on the face of the proceeding. (Barnes v. Plessner, 121 Mo. App. 677, 97 S. W. 626; Shaw v. Railroad, 110 Mo. App. 561, 85 S. W. 611; Patchen v. Durrett, 116 Mo. App. 437, 92 S. W. 721.)

"The Legislature has the right to say in what jurisdiction statutory misdemeanors shall be prosecuted and to make that jurisdiction exclusive. (State v. Gordan, 60 Mo. 383; State v. Hall, 189 Mo. 262, 87 S. W. 1181.)

"In the case of State v. Sexton, supra, the authorities upon this point are collected, and we re-affirm what we said in that case."

Although, as we have stated, constables and their deputies are not limited to their respective townships in making arrests for violations of the law, yet we are of the opinion that by virtue of Section 3414, supra, in order to give jurisdiction in a misdemeanor prosecuted before a justice of the peace, the prosecution must be instituted before some justice of the peace in the township where it is alleged the offense was committed. In other words, if a constable or deputy constable arrests a traffic violator outside of his township, but in his county, he can not take the alleged violator back to his township to be tried before a justice of the peace, but must bring him before a justice of the peace in the township where it is alleged the offense was committed.

Section 3415, R. S. Mo. 1929, provides as follows:

"Prosecutions before justices of the peace for misdemeanors shall be by information, which shall set forth the offense in plain and concise language, with the name of the person or persons charged therewith: Provided, that if the name of any such person is unknown, such fact may be stated in the information, and he may be charged under any fictitious name; and when any person has actual knowledge that any offense has been committed that may be prosecuted by information, he may make complaint, verified by his oath or affirmation, before any officer authorized to administer oaths, setting forth the offense as provided by this section, and file same with the justice of the

peace having jurisdiction of the offense, or deliver same to the prosecuting attorney; and whenever the prosecuting attorney has knowledge, information or belief that an offense has been committed, cognizable by a justice of the peace in his county, or shall be informed thereof by complaint made and delivered to him as aforesaid, he shall forthwith file an information with a justice having jurisdiction of the offense, founded upon or accompanied by such complaint."

Section 3416, R. S. Mo. 1929, provides as follows:

"All such informations shall be made by the prosecuting attorney of the county in which the offense may be prosecuted, under his oath of office, and shall be filed with the justice as soon as practicable, and before the party or parties accused shall be put upon their trial, or required to answer to the charge for which they may be held in custody: Provided, that complaints subscribed and sworn to by any person competent to testify against the accused may be filed with any justice of the peace, and if the justice be satisfied that the accused is about to escape, or has no known place of permanent residence or property in the county likely to restrain him from leaving for the offense charged, he shall immediately issue his warrant and have the accused arrested and held until the prosecuting attorney shall have time to file an information."

Section 2162, R. S. Mo. 1929, provides that:

"Every justice of the peace who shall be convicted of bribery, perjury or other infamous crime, or of any misdemeanor in office, shall be removed from office."

It is to be noted that prosecutions before justices of the peace for misdemeanors shall be by information, and further that such information must be made by the prosecuting attorney of the county in which the offense may be prosecuted. It has been the common practice, as we understand it, for certain constables and their deputies in "cruising the highways" to make arrests and instead of trying them before a justice of the peace in the township where it is claimed the offense was committed, to cause the alleged violator to drive back to his own township to appear before a justice. As we have pointed out, this is clearly in violation of Section 3414, supra. Furthermore, when the alleged violator is brought before the justice, the general practice is for the latter to inquire of the officer the nature of the charge and then the question of guilty or not guilty. In the usual case the alleged violator will plead guilty and pay his fine rather than put up a cash bond and be forced to return a good distance to stand trial, for, as happens in the average case, the alleged violator may live a good distance from the scene of the alleged offense.

We are of the opinion that under Sections 3415 and 3416, supra, when an alleged violator is brought by a constable, deputy, or peace officer, as the case may be, before a justice of the peace charged with a misdemeanor, before the party or parties accused shall be put upon their trial or required to answer to the charge for which they may be held in custody, or before any punishment can be meted out, an information must be obtained from the prosecuting attorney of the county in which the offense occurred. This is mandatory under the statutes and any justice of the peace who attempts to cause a person to stand trial, answer to the charge, and to mete out punishment without the alleged offender being apprized of the nature of his offense by information, is guilty of misdemeanor in office and subject to ouster as set out in Section 2162, supra.

Although, as we have stated, it is mandatory under the statutes that an information be obtained from the prosecuting attorney of the county in which the offense occurred, it is not imperative on the prosecuting attorney to file an information on the mere filing of a complaint with him by one having knowledge that an offense has been committed.

The court in the case of State v. Ransberger, 106 Mo. 135, l. c. 137, on holding that the prosecuting

attorney may, in his discretion, file an information or refuse to do so if a complaint be filed, said:

> "Judge Ellison, after reviewing the law as to the nature and attributes of an information, and the method of its presentation to the court, adds: 'From these considerations, it would be clear to the legal mind that a common-law information is one that is intrusted solely to the discretion of our state attorney to be given or withheld at his will, unhampered by statutory restraint, and, as the case in some respects presents a constitutional question it becomes, under our conclusion herein, of great public importance, that the opinion of the Supreme Court should be taken.'"

From the foregoing, we are of the opinion that the prosecuting attorney may, in his discretion, file an information or refuse to do so if a complaint be filed, and if such can not be obtained, the justice of the peace can not hold the alleged violator, but must free him. The prosecuting attorney should have knowledge, that is, be reasonably convinced, not only that an offense has been committed, but that the accused committed it. Whenever an information is sought from the prosecuting attorney upon a complaint and he be reasonably convinced that the accused has not violated the law as charged by the peace officer, but that the accused has run into a "so-called trap", he may, in his discretion, refuse to file the information.

The above procedure must be carried out by peace officers who bring alleged violators before justices of the peace.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney-General.

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney-General.

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