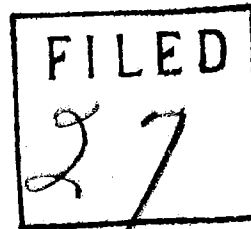


JUSTICE OF THE PEACE: Power to issue a warrant.



July 12, 1946

7.26

Honorable C. E. Ernst
Prosecuting Attorney
Gentry County
Albany, Missouri

Dear Mr. Ernst:

We are in receipt of your letter of July 8, 1946, asking for an official opinion, and reading as follows:

"The question has been raised in this county as to whether or not since the first day of July a Justice of the Peace has jurisdiction to issue a warrant for a preliminary hearing on a complaint filed in his Court charging a defendant with a felony. If you can advise me on this at your early convenience it will be appreciated."

Section 3857, R. S. No. 1939, provides as follows:

"Whenever complaint shall be made, in writing and upon oath, to any magistrate hereinbefore mentioned, setting forth that a felony has been committed, and the name of the person accused thereof, it shall be the duty of such magistrate to issue a warrant reciting the accusation, and commanding the officer to whom it shall be directed forthwith to take the accused and bring him before such magistrate, to be dealt with according to law."

This statute, unless repealed, gives power to a justice of the peace to issue a warrant in a proper case.

Section 4 of the Schedule of the Constitution of Missouri of 1945 provides as follows:

"All courts of common pleas now existing, the St. Louis courts of criminal correction, and all circuit court circuits as now established, shall continue until changed or abolished by law. The justices of the peace shall continue to hold their offices and receive the emoluments thereof until their terms of office expire, upon which their records shall be transferred to the magistrate courts."

Section 2 of the Schedule of the Missouri Constitution provides as follows:

"All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full force and effect until amended or repealed by the general assembly. All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

Senate Bill 194, relating to the repeal of Sections 2522 to 2811, R. S. Mo. 1939, inclusive, does not affect the office of justice of the peace as it now exists, nor does it affect the jurisdiction of the justice of the peace court, as the bill specifically provides that Sections 2522 to 2811 shall not be repealed before January 1, 1947, or before the expiration of the terms of office of justices of the peace in counties in which their terms of office expire after January 1, 1947.

In Section 3791, R. S. Mo. 1939, it is provided that among those who shall have power and jurisdiction to issue process for the apprehension of persons charged with criminal offenses, and hold them to bail, are justices of the peace.

There have been no bills passed in this Legislature which in any way restrict the powers and duties of justices of the peace under Sections 3791 and 3857, R. S. Mo. 1939. Since it is provided in the Schedule of the Constitution that

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Justices of the peace shall continue to hold their offices and receive the emoluments thereof until their terms of office expire, and since there has been no law enacted which repeals Sections 3791 and 3857, R. S. Mo. 1939, under Section 2 of the Schedule of the present Constitution, such sections are still in effect.

CONCLUSION

A justice of the peace, at the present time, has jurisdiction to issue a warrant for a preliminary hearing when a complaint is filed in his court charging a person with a felony.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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