ARRESTS:
POLICE:
ST. LOUIS COUNTY: (a) A defendant in a criminal case need not be arraigned in open court before his commitment to jail; (b) In St. Louis County, a person may not be arrested for a misdemeanor without a warrant, unless the arresting officer saw the misdemeanor committed. The above is true for police officers of a municipality or a county and whether the misdemeanor is a violation of a state law or a city ordinance. County and city ordinances cannot set aside a state law.

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December 27, 1955

Honorable Edward Garnholz
Prosecuting Attorney
St. Louis County
Courthouse
Clayton 5, Missouri

Dear Sir:

In your letter to us of November 10, 1955, you request our official opinion upon a number of questions. These we will consider in the order in which you ask them. All references to statutes will be to RSMo 1949, unless otherwise indicated.

Your first question is:

> "A defendant is arrested, his bond set ex parte, and his case set for trial on a date convenient to the court in view of its docket situation. Should this defendant be arraigned in open court before his commitment to jail; if so, when.* * *"

In reference to this question we direct attention to Supreme Court Rule 25.04, which reads:

> "Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. A defendant may plead not guilty or guilty. The court may refuse to accept a plea of guilty, and shall not accept the plea without first determining that the plea is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead or pleads equivocally, or if the court refuses to accept a plea of guilty, or if a defendant corporation fails to appear, the court shall enter a plea of not guilty. If a defendant is tried as if he had been arraigned and entered a plea of not guilty,

> the failure of the record to show arraignment and the entry of such plea shall not constitute reversible error."

While the above rule holds that "if a defendant is tried as if he had been arraigned and entered a plea of not guilty" whereas he had not been arraigned, such lack of arraignment will not constitute reversible error, yet the rule makes quite clear the fact that arraignment should be had. In general, the question is when it should be had, and specifically whether it should be had before a defendant who has been arrested, had his bond set, and his case set for trial, is committed to jail.

From your statement of your question it would seem that you contemplate a situation in which the defendant is arrested, brought into court, has his bond set and his case set down for trial, all at the same time and in one continuous operation. Your question is whether, sometime during this process, he should be arraigned, that is, called upon to plead guilty or not guilty, before he is committed to jail.

From a reading of Supreme Court Rule 25.04, supra, it would seem to us that arraignment, as a part of the above-described process before commitment to jail, was not contemplated by it.

It will be noted that the rule states that "arraignment * * * shall consist of reading the indictment or information to the defendant, or stating to him the substance of the charge * * *." In such a situation as you present, there might be a grand jury indictment to be read to the defendant, but there could not be an information, since an information in a felony case can only come after a binding-over at a preliminary examination, which could not have taken place in the situation you describe. Furthermore, a defendant, in the situation set forth by you, would have no time to consult with counsel or to consider and evaluate the situation. We believe your question is answered by Supreme Court Rule 25.03, which reads:

> "The defendant in an indictment or information shall not be required to plead thereto until he shall have had a reasonable time in which to examine the same and to prepare his pleading."

Certainly requiring a defendant to plead under the circumstances set forth by you could not by any one be construed as giving him "a reasonable time in which to examine the same", that is the indictment or information, even if they were in existence at that time, which, in the case of a felony charge, we have shown could not by its very nature be in existence at the time of the defendant's arrest. As bearing upon this matter, we also direct attention to Supreme Court Rule 25.02, which reads:

> "Whenever an indictment is found, or an information filed, in a court of record, it shall be the duty of the clerk, upon the request of the defendant therein, to make out and deliver to him a copy of such indictment or information with all endorsements thereon."

In the light of the above we hold that a defendant who has been arrested, had his bond set, and his case set for trial, should not be arraigned before his commitment to jail. We do not attempt to pass upon the time, after commitment to jail, when arraignment should be had, since you do not ask that question.

Your second question is:

> "If a misdemeanor is committed in the presence of a police officer of municipality 'A' in St. Louis County and pursued to municipality 'B' in St. Louis County, where officers of municipality 'B' apprehend the suspect, can the suspect be 'booked' in municipality 'B' as a fugitive from municipality 'A' and then turned over to officers from municipality 'A' in the absence of a warrant, to be returned for trial in municipality 'A'?"

In view of the fact that in St. Louis County in order for a person to be liable to an arrest without a warrant for a misdemeanor, the misdemeanor must have been committed in the presence of the arresting officer; and since the police officers of municipality "B" did not view the commission of the misdemeanor, we do not believe that they had any authority to arrest the suspect in the situation which you hypothecate, and that, since the arrest was illegal, they were without authority to take subsequent action whatever in regard to the suspect.

In the case of State v. Collins, 172 S.W.2d 284, at l.c. 291, the court stated:

> "Except for situations where the right is specially given by statute, a peace officer has no authority, without a warrant, to arrest a person charged with the commission of a misdemeanor unless the offense was committed in the officer's presence. Greaves v. Kansas City Junior Orpheum Co., 229 Mo. App. 663, 80 S.W. 2d 228; Wehmeyer v. Mulvihill, 150 Mo. App. 197, 130 S.W. 681. The offense of which relator was suspected was of course a misdemeanor--the crime of petit larceny growing out of the theft of a grease gun shown to have been worth from twelve to fifteen dollars. Sec. 4469, RSMo 1939,

> Mo. R.S.A Sec. 4469. Moreover, the offense, if any, was not committed in Collins' presence so as to have dispensed with the necessity that he have a warrant as his authority for making the arrest."

In view of the above, the answer to your second question is in the negative.

Your third question is:

> "If the suspect was arrested by police officers of the St. Louis County Police Department instead of officers of municipality 'B' would your answer to question (2) above be the same?"

The answer to this question is the same as the answer to your second question, and for the same reason.

Your fourth question is:

> "If the offense referred to in question (2) or (3) above were a city ordinance violation, would the answers be the same?"

The primary question here is whether municipal peace officers in municipality "B" would have any right to arrest in municipality "B" a person who had violated an ordinance of municipality "A" in municipality "A". The assumed situation is, of course, that the person violating the ordinance of "A" in "A" came over into "B" and that the arresting officers in "B" did not witness the commission of the violation in municipality "A".

In this regard we refer to police provisions applicable to third class cities, and specifically to Section 85.540, which holds that the marshal in cities of the third class shall have power at all times to make or order an arrest with proper process for any offense against the laws of the city, and which further holds that the marshal shall also have power to make arrests without process in all cases in which the offense against the laws of the city shall be committed in his presence. Also Section 85.580, which holds that the policemen of a third class city shall have the same power as the marshal relative to the arrest and commitment of all offenders against the laws of the city.

From the above it is plain that police officers of a third class city have the power to arrest for the violation of the laws of their city, but that they are limited to such violations so far as the violation of city laws is concerned, and that they do not have the power to arrest for the violation of the laws of any other city than their own.

Section 85.610 applies to fourth class cities and makes similar provisions in regard to the power of arrest, as did Section 85.540 referred to above.

Section 85.620 gives the members of the police force of a city of the third class the same arresting powers as the marshal.

Section 80.410 refers to the powers of arrest in towns and villages, and reads as follows:

> "The town marshal shall be chief of police, and shall at all times have power to make or order all arrests, with proper process, for any offenses against the laws of the state, or of the town, by day or by night, and bring the offender to trial before the proper court, and he shall have power to arrest without process in all cases where any such offense shall be committed, or attempted to be committed, in his presence."

Section 80.420 reads as follows:

> "The policemen of the town, in the discharge of their duties, shall be subject to the orders of the marshal only as chief of police; but any marshal, assistant marshal or policeman may be instantly removed from his office by the board of trustees at a regular or called meeting, for any wanton neglect of duty."

Your fifth question is:

> "Would the answers to questions (2), (3) and (4) above be any different:
>
> a. If county ordinances authorized county police to make arrests in this situation?
>
> b. If city ordinances of municipalities authorize county police to make arrests in this situation?"

If county and city ordinances authorized county police to make arrests in these situations, our answers above would be the same because, as was stated in the case of State v. Collins, supra, a peace officer, in the absence of a statute authorizing him to do so (and there is no such statute applicable to St. Louis County), cannot arrest for a misdemeanor not committed in his presence. This is the law of the State of Missouri and it certainly cannot be changed, negatived, or set aside by a county or city ordinance.

CONCLUSION

It is the opinion of this department that: (a) a defendant in a criminal case need not be arraigned in open court before his commitment to jail in case he does not make bond; (b) In St. Louis

Honorable Edward Garnholz

County a person may not be arrested for a misdemeanor without a warrant unless the arresting officer saw the misdemeanor committed.

The above is true for police officers of a municipality or a county, whether the misdemeanor is a violation of a state law or a city ordinance. County and city ordinances cannot set aside a state law.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

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