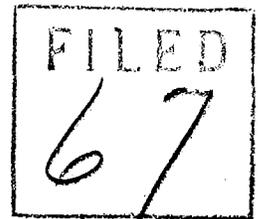MAGISTRATES: Prosecuting attorney may file information for a
misdemeanor in the circuit court and may file a
delinquency case in the circuit court. Defendant
cannot take a change of venue from circuit court to
magistrate court.

Criminal Law

March 5, 1947

3/7

Honorable Joel B. Norman
Magistrate of Stone County
Galena, Missouri

Dear Sir:

This will acknowledge receipt of your letter of
recent date in which you have requested an opinion of this
department in regard to the following questions:

(1)   May the prosecuting attorney file informa-
tions for misdemeanors in the circuit court?

(2)   May a defendant take a change of venue from
a circuit court to a magistrate in a mis-
demeanor case?

(3)   May the prosecuting attorney file delinquency
cases in the circuit court rather than the
magistrate court?

In answer to question one, we direct your attention
to Section 1 of Senate Bill 193, which provides:

"Magistrates shall have concurrent
original jurisdiction with the circuit
court, coextensive with their respec-
tive counties in all cases of misde-
meanor, except in cities having courts
exercising exclusive jurisdiction in
criminal cases, or as otherwise pro-
vided by law."

It is clear from the above section that the circuit
courts also have original jurisdiction in all cases of misde-
meanors. Therefore, the prosecuting attorney may file any mis-
demeanor case in the circuit court if he so desires.

Your second question is whether or not a change of venue may be taken from a magistrate court to a circuit court. There are provisions for taking a change of venue from one magistrate court to another and from the magistrate court to the circuit court in Senate Bill 193 and Senate Bill 207 of the 63rd General Assembly, but there is no provision in said bills for taking change of venue from the circuit court to the magistrate court. Change of venue from the circuit court is provided for by Section 4015, R. S. Mo. 1939, which reads as follows:

> "Any criminal cause pending in any circuit court may be removed, by the order of such court or the judge thereof, to the circuit court of another county in the same circuit, whenever it shall appear, in the manner hereinafter provided, that the minds of the inhabitants of the county in which the cause is pending are so prejudiced against the defendant that a fair trial cannot be had therein."

And Section 4017, R. S. Mo. 1939, which reads as follows:

> "Whenever it shall appear, in the manner hereinafter provided, that the inhabitants of the entire circuit are so prejudiced against the defendant that a fair trial cannot be had therein, the cause shall, by order of the court or judge thereof, be removed to another circuit, in which such prejudice is not alleged to exist."

Therefore, since the above sections provide that the case shall be transferred to another circuit court, a change of venue cannot be taken by a circuit court to a magistrate court.

The last question you ask is whether or not the prosecuting attorney may file delinquency cases in the circuit court. Section 11 of Senate Bill 207, provides:

> "Magistrate courts, in counties of less than 70,000 inhabitants, shall have concurrent juvenile jurisdiction with the circuit court, and the powers of the circuit judge in chambers when the circuit judge is absent from the county."

You will note under the above section that the magistrate and circuit courts have concurrent juvenile jurisdiction. Therefore, the prosecuting attorney can file a delinquency case either in the circuit court or the magistrate court as he so desires.

Conclusion

It is, therefore, the opinion of this department that (1) a prosecuting attorney may file an information for a misdemeanor in the circuit court; (2) a defendant cannot take a change of venue in a misdemeanor case from a circuit court to a magistrate court; and (3) a prosecuting attorney may file a delinquency case in either the circuit court or a magistrate court.

Respectfully submitted,

PERSHING WILSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

PW:EG