

GOVERNOR: Cannot offer r under Sec. 3589, R.S. Mo. 1929 unless
some person be charged with a felony or convicted of a
felony and flee from justice.

3-18
March 18, 1936.



Honorable Guy B. Park,
Governor of Missouri,
Jefferson City, Missouri.

Dear Governor Park:

This department received from you on March 16 a request for the construction of Section 3589, R.S. Mo. 1929, your precise question being as follows:

"Kindly advise me whether under Section 3589, R.S. of Missouri, 1929, or under any other authority, I am authorized to issue a reward under the circumstances as narrated in the letter, a copy of which I enclose."

Attached to your letter is a copy of a letter received from the Honorable William H. Sapp, Prosecuting Attorney of Boone County, wherein he makes the following request of you in connection with the recent death of Mrs. Eula Northcutt of Columbia, Mo.:

"Mrs. Eula Northcutt was killed at her home here in Columbia on the 3rd day of July, 1935, and as yet we have been unable to solve the crime. I asked the County Court Saturday of last week to offer a reward for the arrest and conviction of the person or persons who committed the crime and it made such an order this morning. The Court fixed the amount of the reward at \$400.00. If you will offer a similar reward, it is possible that something can be done."

Section 3589, R.S. Mo. 1929 provides:

"If a person charged with or convicted of a felony shall break prison, escape or flee from justice, and abscond or secrete himself, the Governor of this state may, if he deem it expedient, offer any reward, not exceeding three hundred dollars, for the apprehension and delivery of such person to the custody of such sheriff or other officer, as he may direct."

This section is found under Article VIII, Chapter 29, the general caption being "Extradition and Arrest of Fugitives From Justice". While it might be conceded that every man who commits a crime and flees is a fugitive from justice, the statute appears to contemplate that either of two conditions must exist before the Governor may offer the reward not exceeding three hundred dollars, i.e., the person must be charged with a felony or must be convicted of a felony.

The letter from Mr. Sapp states that the crime has not been solved. He does not request you as Governor to offer a reward for any designated person--his letter purports to be a request for a reward for the arrest and conviction of the person or persons who committed the crime. Without any suggestion as to who may have committed the crime, and no one is mentioned as being charged with the crime, the County Court of Boone County, in offering the reward, does so under Sec. 3500, R.S. Mo. 1929, which is as follows:

"Whenever the county court of any county in this state, or any two judges thereof in vacation, shall be satisfied that any felony has been committed in said county, such court or judges may, at their discretion, offer a standing reward of not exceeding five hundred dollars for the apprehension and arrest of the person or persons committing the same, which reward shall be paid out of the county treasury; but in no instance shall any reward, or any part thereof, be paid to any person who may

be entitled thereto until final conviction of the defendant."

You will note from the above section that it is not essential for a person to be charged with or to have been convicted of a felony before the County Court is authorized to offer the reward not exceeding five hundred dollars, as the statute states "Whenever the county court * * * shall be satisfied that any felony has been committed in said county" * * "

The only decision in the State of Missouri that we are able to locate bearing on the question is that of State ex rel. v. Auditor, 61 Mo. 263, in which the facts were as follows (l.c. 265)

"In 1866, in the month of February, the Governor of the State issued a proclamation reciting that four persons named were guilty of murder; that they had all fled from justice and were still at large, a reward of \$300 was offered for the apprehension of any one of them, and a delivery to the sheriff, and a particular description of each fugitive was appended to the proclamation,"

and further enlightening on the fact that the reward must be offered for the apprehension of the person charged with a crime or convicted of a felony, the Court states (l.c. 269-270):

"Conceding that this decision is applicable to the action of the Governor of Missouri in issuing a proclamation for a fugitive, the concession would only lead to the conclusion that the propriety of the Governor's action could not be questioned, and it may be further admitted that the proclamation was conclusive, that the persons advertised were indicted as stated, and that they were at its date fugitives from justice, although the Governor may upon these points have been misled by the information he received. But it does not follow from this that the arrest of the persons

advertised as fugitives would authorize the payment of the reward offered, if it appeared that at the time of their arrest they were not in fact fugitives from justice, but living openly and notoriously at their usual places of abode, without any concealment, and accessible by the officers of the law at all times. The parties named in the proclamation may have been at its date fugitives from justice. At the date of the arrest, seven years after the proclamation issued, it is agreed they were not fugitives. The reward is offered to secure fugitives from justice, and not to secure the delivery of a person not a fugitive, and who can be arrested by the sheriff at any time he pleases."

Section 3589, supra, has remained on our statute books in its present terms for more than fifty years. We are unable to locate any other statute which has any bearing on the question.

We call your attention to the fact that Section 3589 leaves the matter entirely to your discretion by stating "The Governor * * * if he deem it expedient"; however, it is our opinion that even though you as Governor deem it expedient and desire to offer a reward, you cannot exceed the power given you by the plain wording of the statute. Crawford v. Spenny, 21 Ill. 288.

The Supreme Court of California, in discussing a section of the statutes similar in nature to that of the Missouri section, in the case of Lees v. Colgan, 52 Pac. l.c. 503, said:

"The governor of the state offered this reward by virtue of the authority found in section 1547 of the Penal Code, and that section declares: 'The governor may offer a reward not exceeding one thousand dollars, payable out of the general fund, for the apprehension: (1) * * * (2) of any person who has committed or is charged with the commission of an offense punishable with death.' It will be observed that the power of the governor is limited to offering rewards for the apprehension of certain criminals. * * *"

CONCLUSION

Section 3589, supra, authorizes you to offer a reward of not exceeding three hundred dollars for the apprehension of a person who is charged with or convicted of a felony, who breaks prison or who flees from justice, if you deem it expedient. In the instant case, as stated by Mr. Sapp, Mrs. Northcutt was killed at her home and the authorities have been unable to solve the crime; therefore, no one can be named as the probable murderer and as a result, no one is charged with the crime.

It is the opinion of this department the statute contemplates that the identity of the murderer must be known, and in issuing your proclamation it will be necessary for you to mention the name of the person charged with the crime. This, you cannot do under the information presented to you. We are therefore of the opinion that you cannot comply with the request of Mr. Sapp that you offer a reward similar to the reward offered by the County Court of Boone County.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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

OWN:AH