

ST. LOUIS COURT OF
CRIMINAL CORRECTIONS:
BONDS:
BAIL:

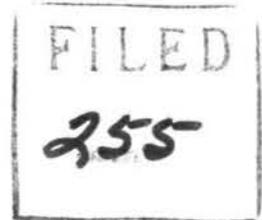
Under Section 479.120, RSMo, the St. Louis Court of Criminal Corrections is in session every day of the week, except Sundays, state and national holidays unless the

court has adjourned. The fact that the judge is not sitting on the bench is not determinative of whether the court is still in session. Only after the judge has officially adjourned the court for the day or for a longer period of time may the clerk of the St. Louis Court of Criminal Corrections set and accept bail as provided for under Section 544.530 (House Bill No. 1160, 76th General Assembly) and Supreme Court Rule 32.01. The clerk must look to the rulings of the court to determine when it has adjourned and thus is no longer "in session."

OPINION NO. 255

August 22, 1973

Honorable Lawrence J. Lee
State Senator, District 3
506 Olive Street
St. Louis, Missouri 63101



Dear Senator Lee:

This opinion is issued in response to your request for a ruling as to when the St. Louis Court of Criminal Corrections is in session to determine when the clerk of the court is empowered under Section 544.530, RSMo, to set and accept bail.

Although your request specifically mentions only Section 544.530, RSMo, we will include a discussion of Supreme Court Rule 32 which relates to the accepting and posting of bonds.

Section 544.530 (House Bill No. 1160, 76th General Assembly) provides:

"When the defendant is in custody or under arrest for an offense for which he may be released as provided in section 544.455 of this act, the court in which the indictment or information is pending may release him and take his bond or recognizance, or, if the court is not in session, the clerk of the court may take his bond or recognizance."

Supreme Court Rule 32.01 provides:

Honorable Lawrence J. Lee

"When a defendant is entitled to bail, the court in which the complaint, indictment or information is pending, or the judge or magistrate thereof, shall admit him to bail, but if the court is not in session, the clerk of the court may admit the defendant to bail."

In Opinion No. 21 issued November 5, 1953, to Davenport (copy enclosed), this office stated that the clerk of the court has a mandatory duty under Section 544.530, RSMo, and Supreme Court Rule 32 to set and accept bail for individuals who have been charged by complaint, indictment or information with a criminal offense when the court is not in session.

In State v. Caldwell, 124 Mo. 509, 28 S.W. 4 (1894), the Missouri Supreme Court stated that a bond or recognizance taken in a criminal case by an unauthorized person is null and void. There the court ruled that the bond taken by the clerk of the court in that case was void since there was no statutory authority existing at the time for his action.

In State v. Eyermann, 172 Mo. 294, 72 S.W. 539 (1903), the Missouri Supreme Court in interpreting Section 2543 of Rev. St. 1899 held that when a defendant is in custody under arrest for a bailable offense, the judge of a court in which the indictment or information is pending can admit the defendant to bail and take his bond or recognizance even when the judge is in chambers and after the court had adjourned for the day.

In State v. Woodson, 179 Mo. 408, 78 S.W. 603 (1904), the Missouri Supreme Court in interpreting Section 2545 Rev. St. 1899 and Section 4160 Rev. St. 1899 held that the purpose of the statute for setting bail was to allow persons who had been charged with a criminal offense to promptly secure their liberty by giving bond. In so holding, the court stated, l.c. 605:

". . . Take this case. The court adjourned until the 20th of June. After adjournment the defendant was ready to give his bond. Must he wait and be held in custody until the next morning, when the court is in session, before his release can be secured? We think not. . . . This statute is broad enough to empower the judge to admit to bail and take bond in any bailable offense pending in the court of which he is judge at any time when the court is not in actual session. . . . When the court is in

Honorable Lawrence J. Lee

session, no one will dispute that all bonds taken must be entered of record,"
(emphasis added)

It is clear that the judge of a court under case law of this state has the authority to set and accept bail in chambers, even after the court has adjourned or recessed. The clerk's authority, however, is limited by Section 544.530, RSMo, and Supreme Court Rule 32.01 to those times when the court is not in session.

Section 479.120, RSMo, which relates to the St. Louis Court of Criminal Corrections states:

"Each division of the court shall be in session every day in the week except Sunday and state and national holidays, unless adjourned by the judge thereof as herein provided. The judge of each division may adjourn his division for a period not to exceed seven days exclusive of Sunday and state and national holidays; and the proceedings in each division shall be conducted in a summary manner. The judges of the court may establish such rules and regulations in relation to continuances as shall be just and proper."

Although we have found no Missouri case setting forth when a court is in session, "session" has been variously defined. Black's Law Dictionary, 4th Edition, states at 1536-1537:

"SESSION. The sitting of a court, Legislature, council, commission, etc., for the transaction of its proper business. Hence, the period of time, within any one day, during which such body is assembled in form, and engaged in the transaction of business, or, in a more extended sense, the whole space of time from its first assembling to its prorogation or adjournment *sine die*. *Ralls v. Wyand*, 40 Okl. 323, 138 P. 158, 162.

"Session of court is time during term in which court sits for transaction of business, after judge arrives and opens court. *Carpenter v. City of Birmingham*, 221 Ala. 368, 128 So. 899, 900.

Synonyms

Honorable Lawrence J. Lee

"Strictly speaking, the word 'session,' as applied to a court of justice, is not synonymous with the word 'term.' The 'session' of a court is the time during which it actually sits for the transaction of judicial business, and hence terminates each day with the rising of the court. A 'term' of court is the period fixed by law, usually embracing many days or weeks, during which it shall be open for the transaction of judicial business and during which it may hold sessions from day to day. But this distinction is not always observed, many authorities using the two words interchangeably. *Muse v. Harris*, 122 Okl. 250, 254 P. 72, 73; *State v. City of Victoria*, 97 Kan. 638, 156 P. 705, 708; *Nation v. Savely*, 127 Okl. 117, 260 P. 32, 35."

Ballentine's Law Dictionary, 2nd Edition, states at 1190:

"Session of court . . . the time during which the court is in fact holding court at the place appointed and engaged in business."

In *Carpenter v. City of Birmingham*, 221 Ala. 368, 128 So. 899 (1930), the Alabama Supreme Court stated, l.c. 900:

"'. . . A session of court is the time during a term in which the court sits for the transaction of business, and a court is not in session until the judge arrives and opens court. . . .'"

Thus, it is clear that the legislature in enacting Section 479.120, RSMo, contemplated that the St. Louis Court of Criminal Corrections is to be open every day of the week for the transaction of judicial business unless and until specifically adjourned by the judge thereof except on Sundays and state and national holidays. Furthermore, it is clear that whether the judge is sitting on the bench is not determinative of whether the court is still in session. The judge may be in chambers conducting judicial business or the court may only be in recess for a short period of time during which business is temporarily suspended. Yet, the court is still sitting for the transaction of business. It is the opinion of this office that the court is "in session" from the time the judge has officially convened court in the morning to the time that the judge has officially adjourned court for the day or for a longer period of time as provided for in the statute. Once the judge has officially adjourned court, bail may be set by either the judge of the

Honorable Lawrence J. Lee

court or by the clerk of the court. Should bail be set by the clerk of the court at any other time, it would be null and void and could not be enforced. State v. Caldwell, supra.

CONCLUSION

It is the conclusion of this office that under Section 479.120, RSMo, the St. Louis Court of Criminal Corrections is in session every day of the week, except Sundays, state and national holidays unless the court has adjourned. The fact that the judge is not sitting on the bench is not determinative of whether the court is still in session. Only after the judge has officially adjourned the court for the day or for a longer period of time may the clerk of the St. Louis Court of Criminal Corrections set and accept bail as provided for under Section 544.530 (House Bill No. 1160, 76th General Assembly) and Supreme Court Rule 32.01. The clerk must look to the rulings of the court to determine when it has adjourned and thus is no longer "in session."

The foregoing opinion, which I hereby approve, was prepared by my assistant, Daniel P. Card II.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 21
11-5-53, Davenport