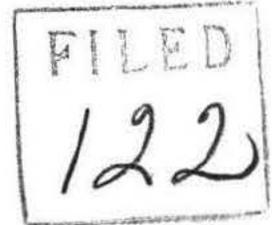


CRIMINAL LAW:
PROSECUTING ATTORNEY:

Prosecuting Attorney has no further jurisdiction over criminal case erroneously commenced in his county, but transferred by Circuit Court to proper county in which crime was committed.



April 21, 1964

Opinion No. 122

Honorable Bill D. Burlison
Prosecuting Attorney
Cape Girardeau County
708 Broadway
Cape Girardeau, Missouri, 63701

Dear Mr. Burlison:

This is in reply to your opinion request of March 3, 1964, in which you state:

"This case was filed in the Circuit Court of Cape Girardeau County. Since the charges were filed, it has come to the attention of the Prosecuting Attorney that the crime was actually committed in the neighboring county of Bollinger. On Motion to the Cape Girardeau Circuit Court this date, the Judge ordered the cause certified and transmitted to the Circuit Court of Bollinger County pursuant to Section 541.120.

"My question is this: Does the Prosecuting Attorney of Cape Girardeau County continue to prosecute for the State in Bollinger County? Or does the Prosecuting Attorney of Bollinger County now become the prosecuting officer?"

The general venue statute for the prosecution of criminal cases is Section 541.030, RSMo 1959, which states:

"Offenses committed against the laws of this state shall be punished in the county in which the offense is committed, except as may be otherwise provided by law."

Honorable Bill D. Burlison

In view of the fact that the crime was actually committed in Bollinger County and not Cape Girardeau County, the Circuit Court of Cape Girardeau County quite properly exercised its duty under Section 541.120, RSMo 1959, by certifying and transmitting the cause to the Circuit Court of Bollinger County.

The authority of a prosecuting attorney to commence and prosecute criminal actions is set forth in Section 56.060, RSMo 1959, by the following language:

"Each prosecuting attorney shall commence and prosecute all civil and criminal actions in his county, in which the county or state is concerned, * * *. In all cases, civil and criminal, in which changes of venue are granted, he shall follow and prosecute or defend, as the case may be, all the causes, * * *."

The legislative intent regarding a prosecuting attorney's limitation in the commencement of criminal actions was spelled out by the Supreme Court of Missouri as early as 1909 in the case of State ex rel Missouri Pac. Ry. Co. v. Williams, 221 Mo. 227, 120 S.W. 740.

In interpreting the legislative intent under Section 4950, Revised Statutes 1899, and Amended Statutes 1906 (which is identical to 56.060, RSMo 1959), the court stated at page 749:

"* * * it was the obvious purpose to restrict the circuit attorney of St. Louis, and the various prosecuting attorneys of the counties of the state, to those matters which arise in their respective counties or city and which affect the interests of their respective local jurisdictions. It will not be seriously asserted, we think, by any lawyer, that the circuit attorney of St. Louis has authority to prosecute a crime committed outside of the corporate limits of St. Louis, and yet the duties and powers of prosecuting attorneys are conferred by the same section which limits such duties and powers to action in their respective counties."

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Section 541.120, RSMo 1959, provides:

"When it appears at any time before verdict or judgment that the defendant is prosecuted in a county not having jurisdiction of the offense, the court may order that all the papers and proceedings be certified and transmitted to the proper court of the proper county, and recognize the defendant to appear before such court on the first day of the next term thereof, to await the action of the grand jury. The witnesses shall also be recognized to appear at such court, that the prosecution may be proceeded with as provided by law." (underlining ours)

Because the underscored language of Section 541.120 provides that the certified matter shall await the action of the grand jury, the prosecuting attorney of the proper county does not automatically assume jurisdiction of the matter by virtue of its being certified under the statute. The prosecuting attorney may, however, independently commence a prosecution in this matter by following the procedure he would follow in any other cause initially raised in his jurisdiction.

CONCLUSION

It is the opinion of this office that when, after charges have been filed in a criminal case, it is ascertained that the alleged crime was committed in another county and the cause is certified and transmitted to the proper court of the county where the crime was committed, the prosecuting attorney of the county where the prosecution was commenced has no authority to take any further action in such case.

The foregoing opinion, which I hereby approve, was prepared by my assistant, George W. Draper, II.

Very truly yours,


THOMAS F. EAGLETON
Attorney General