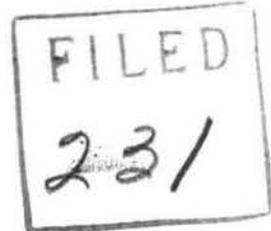


July 2, 1964



Honorable J. R. Fritz
Prosecuting Attorney
Pettis County Courthouse
Sedalia, Missouri

Dear Mr. Fritz:

You ask if an accused, who has reached the age of seventeen but is not yet twenty-one may waive preliminary hearing on a felony charge in Magistrate Court either when represented by counsel or when not represented by counsel.

Assuming that the accused had not been declared a ward of the Juvenile Court prior to attaining age seventeen, which would necessitate a special hearing before he could be proceeded against at all (§211.071, RSMo 1959), he may be prosecuted as an adult and as such may waive preliminary hearing, whether represented by counsel or not.

Of course, no waiver of preliminary hearing may be considered valid unless the accused knows of the advantage he is surrendering, if any, and does so intelligently. The age and experience of an accused is one of the things which must be considered in determining his capacity to waive any of his rights, *Edwards v. Nash*, 303 SW2d 211.

The basic requirement is that no unjust advantage be taken of the accused which would result in prejudicial matter being obtained and used against him later at trial, *White v. Maryland*, 373 U.S. 59, 10 L.Ed.2d 193. This applies to all persons accused of crime, but extra precaution should be taken where it appears that the youth of an offender may have some bearing on his ability to assess his own needs and make intelligent decisions thereon.

Honorable J. R. Fritz

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We have alluded to this matter in a previous opinion about appointment of counsel to represent the indigent in Magistrate Court (#207, June 21, 1963, to Honorable Robert A. Young), and enclose a copy thereof for your use. The subject of your present inquiry appears beginning on page 6 of that opinion.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

HLM:kd
Enc.