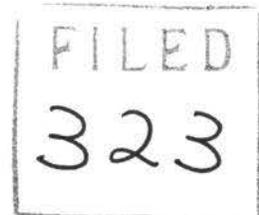


BAIL: With respect to the issuance of summonses
POLICE: and the acceptance of bail by police of-
SUMMONS: ficers of the City of St. Louis: 1. Nei-
ther the judges nor the prosecutors have
the authority to establish systems or standards for the issuance
of summonses for city ordinance or state law violations to be used
by the St. Louis police department. 2. Police officers have au-
thority under Supreme Court Rule 37.09 to serve a person with a
summons instead of arresting such person in any case in which it
is lawful for such officers to arrest the person without a warrant
for violation of a city ordinance. In traffic cases Supreme Court
Rule 37.46, which authorizes the issuance of a summons by police
officers in the form of the uniform traffic ticket, is applicable
to state misdemeanor traffic violations as well as municipal or-
dinance traffic violations. 3. Police officers in charge of the
station houses in St. Louis, under Section 84.230, RSMo, have the
authority, within certain limitations, to accept bail from a per-
son arrested for a municipal violation or a violation of state
law. 4. The Board of Police Commissioners has supervisory au-
thority over officers acting pursuant to Supreme Court Rules
37.09 and 37.46 and Section 84.230, RSMo.

OPINION NO. 323

December 10, 1973

Mr. Curtis Brostron, Secretary
Board of Police Commissioners
1200 Clark Avenue
St. Louis, Missouri 63103



Dear Mr. Brostron:

This is in response to your request for an opinion from this
office as follows:

"1) Is there authority within the stat-
utes or [Supreme Court] rules for the St.
Louis Police Department to devise a system
and establish standards for release on a sum-
mons for City ordinance violations and state
misdemeanors (traffic and non-traffic)?

"2) If the answer to #1 is negative, may
the judges and/or prosecutors of the appro-
priate jurisdictions devise such a system for
implementation by the Department?

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"3) Do St. Louis police officers have the authority to determine the amount of bail in any arrest situation in which no complaint, information or warrant has yet been filed?"

We will consider these questions in a different order than which they have been submitted.

In answer to your second question as to whether the judges or the prosecutors may devise a system to be used by the St. Louis police department for release on summons for violation of city ordinances or for state misdemeanors, our answer is in the negative.

Article V, Section 5 of the Constitution of Missouri provides as follows:

"The supreme court may establish rules of practice and procedures for all courts. The rules shall not change substantive rights, or the law relating to evidence, the oral examination of witnesses, juries, the right of trial by jury, or the right of appeal. The court shall publish the rules and fix the day on which they take effect, but no rule shall take effect before six months after its publication. Any rule may be annulled or amended by a law limited to the purpose."

Under the above constitutional provision, the Supreme Court has promulgated rules regarding the practice and procedure in all municipal courts. Rules 37.01 et seq., govern the practice and procedure of all cases in all municipal courts.

The authority of police officers to issue a summons in cases involving municipal offenses is found in Supreme Court Rule 37.09 which provides:

"A summons instead of a warrant may issue on the filing of a complaint or information charging the commission of an offense if the judge or prosecutor has good reason to believe that the accused will appear in response thereto. In any case in which it is lawful for an officer to arrest a person without a warrant, he may serve such person with a summons instead of arresting the accused. The summons shall describe the offense charged and shall

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command the accused to appear at a stated time and place in answer thereto. The summons may be served in the same manner as a summons in a civil action. If the accused fails to appear as commanded by the summons, a warrant of arrest shall be issued." (Emphasis added)

It is our opinion that under this rule the arresting officer is given authority to serve the person with a summons instead of arresting such a person for any offense in which it is lawful for the officer to arrest without a warrant. The officer's authority under the second sentence of the rule is separate and distinct from the authority given judges and prosecutors under the first sentence of the rule. This rule is limited to municipal violations and does not apply to violations of state laws.

The authority of police officers to issue a summons in traffic cases for state misdemeanor violations as well as for violations of municipal ordinances is found in Supreme Court Rule 37.46 which authorizes police officers to issue a summons in the form of the uniform traffic ticket.

In answer to your third question asking whether the St. Louis police officers have authority to determine the amount of bail in any arrest situation in which no complaint, information or warrant has been filed, Section 84.230, RSMo, provides:

"The commissioners of police shall cause all persons arrested by the police to be brought before some proper magistrate within said cities, to be dealt with according to law. Proper police officers in charge of police station houses may, if the offense charged against any person is a bailable one, at the request of such person, take from him a recognizance in such sum as may seem to be sufficient and proper with sufficient sureties for his appearance at the proper time before some proper magistrate; but no attorney at law, police officer, constable or his deputy, and no official or employee holding office under the municipality of the said cities, or the state of Missouri, and no clerk in the employ of such officer, officials or employees shall be accepted as surety upon such bond or bonds; the proper officers in charge of said station houses may administer oaths

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to parties qualifying as such surety or sureties; and may refuse to receive as such surety or sureties any and all parties with unsavory reputations or who, as professional bondsmen, tend to defeat the ends of justice, and no one shall be accepted as bondsman who shall have standing against him as unsatisfied judgment rendered on a forfeited bond; such proper police officers in charge of police stations may, prior to the appearance of any person arrested before some proper magistrate, refuse to admit to the presence of arrested persons confined in stations, all persons who have the reputation of being what is known as grafters or shysters, or those attorneys who are guilty of the practice of soliciting business." (Emphasis added)

Under these provisions, the proper police officer in charge of a police station has authority to determine the amount of bail, if the offense charged is a bailable one, for the appearance of such person before the proper "magistrate." In our view, the term "magistrate," as used in the above section, is used in a generic sense (see Ballentine's Law Dictionary, Second Edition, "magistrate," page 780) and therefore this statute includes arrests for municipal violations as well as arrests for violations of state statutes.

In answer to your first question, the Board of Police Commissioners is the governing authority of the St. Louis police department under the provisions of Sections 84.010, RSMo et seq., and particularly Section 84.170, RSMo. Therefore, the Board has authority to establish standards for police officers to follow in the execution of such officers' discretion under Supreme Court Rules 37.09 and 37.46 and Section 84.230 because of the authority of such police officers is necessarily limited by the power of the Board to control the police force.

CONCLUSION

It is the opinion of this office with respect to the issuance of summonses and the acceptance of bail by police officers of the City of St. Louis that:

1. Neither the judges nor the prosecutors have the authority to establish systems or standards for the issuance of summonses for city ordinance or state law violations to be used by the St. Louis police department.

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2. Police officers have authority under Supreme Court Rule 37.09 to serve a person with a summons instead of arresting such person in any case in which it is lawful for such officers to arrest the person without a warrant for violation of a city ordinance. In traffic cases Supreme Court Rule 37.46, which authorizes the issuance of a summons by police officers in the form of the uniform traffic ticket, is applicable to state misdemeanor traffic violations as well as municipal ordinance traffic violations.

3. Police officers in charge of the station houses in St. Louis, under Section 84.230, RSMo, have the authority, within certain limitations, to accept bail from a person arrested for a municipal violation or a violation of state law.

4. The Board of Police Commissioners has supervisory authority over officers acting pursuant to Supreme Court Rules 37.09 and 37.46 and Section 84.230, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General