

SUNSHINE LAW:
CITIES, TOWNS & VILLAGES:
CRIMINAL PROCEDURE:
POLICE COURT:
ARRESTS:

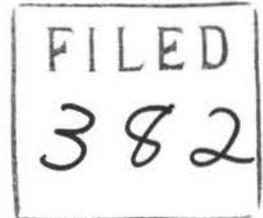
1. Section 610.100, RSMo Supp. 1973, with respect to arrest records, is applicable to arrests for ordinance violations of the City of Maplewood, if such arrests were made within the geographical boundaries of such city

or within the geographical boundaries of St. Louis County. 2. Section 610.100 is not applicable to situations in which the accused person has been given a summons which notifies him that charges are pending against him, but has not actually been arrested. 3. Section 610.100 does not require expungement of records pertaining to arrests for charges which have been amended to charge lesser offenses than those of which the person was originally accused, if the person was charged with any offense within thirty days of his arrest.

OPINION NO. 382

December 31, 1974

Honorable James N. Riley
State Representative, 88th District
7363 Goff Avenue
Richmond Heights, Missouri



Dear Representative Riley:

This official opinion is issued in response to your request for a ruling on the following questions:

"1. Is Section 610.100 applicable to ordinance violations brought before the Municipal Court of Maplewood, being a city of approximately 13,000 people within St. Louis County, being a county of over 500,000 people?

"2. If so, is Section 610.100 applicable to summons as well as arrests?

"3. If Section 610.100 is applicable to Maplewood ordinance violations does this require expungement of original charges that have been amended to some other charge?"

Section 610.100, RSMo Supp. 1973, to which your questions refer, provides as follows:

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"If any person is arrested and not charged with an offense against the law within thirty days of his arrest, all records of the arrest and of any detention or confinement incident thereto shall thereafter be closed records to all persons except the person arrested. If there is no conviction within one year after the records are closed, all records of the arrest and of any detention or confinement incident thereto shall be expunged in any city or county having a population of five hundred thousand or more."

The answer to your first question may be found in our Opinion No. 321, issued to Colonel Samuel S. Smith on December 10, 1973. A copy of that opinion is enclosed. We held there that the first sentence of Section 610.100 applies throughout the State of Missouri, and that the second sentence of Section 610.100 applies if the arrest giving rise to the case took place within the geographical confines of either a city or a county having a population of 500,000 or more. All arrests for municipal ordinance violations of the City of Maplewood which take place within the geographical area of St. Louis County (in which the City of Maplewood is located) will therefore be subject to the provisions of Section 610.100, since St. Louis County is a county which fits within the above description.

With respect to your second question, you have stated the following:

"A number of municipal charges are the result of the issuance of either a Uniform Traffic Ticket or of a summons which may or may not constitute an arrest depending upon the factual situation. Assuming the particular situation does not constitute an arrest it is merely a notice procedure via a summons. My question is whether or not these situations would fall within the particular section."

We are of the opinion that the term "arrest" in Section 610.100 does not refer to the situation in which a person is merely served with a summons as notice of a charge. In Missouri Public Service Company v. Platte-Clay Electric Cooperative, Inc., 407 S.W.2d 883, 891 (Mo. 1966), it was stated that

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". . . We are enjoined by §1.090 to take words and phrases in their plain or ordinary and usual sense. In *Marty v. State Tax Commission of Missouri*, Mo.Sup., 336 S.W.2d 696, we approved the rule that the legislative intent should be ascertained from the words used, if possible, and that the plain and rational meaning of language should be ascribed to it. . . ."

We do not believe that any situation which does not constitute an arrest, in the plain and ordinary meaning of that term, is comprehended by Section 610.100. The term "arrest" is normally understood to comprehend some form of physical detention or restraint of the person arrested, and not merely the service of notice upon him. See Section 544.180, RSMo 1969. In *Douglas v. Buder*, 412 U.S. 430, 93 S.Ct. 2199, 37 L.Ed.2d 52 (1973), the United States Supreme Court held that the issuance of a traffic citation does not constitute an arrest under Missouri law, unless the person is actually restrained or taken into custody by the officer issuing the citation.

Your third question apparently refers to the situation in which a person who is arrested is charged with one offense, but that charge is later dropped and he is actually charged with a different, lesser offense.

This question can also be answered by reference to our Opinion No. 321, *supra*. In that opinion we held that Section 610.100 requires closing of records of arrests only if the arrested person is "not charged with an offense against the law within thirty days of his arrest." The term "an offense" can refer to any offense. Therefore, neither closing nor expungement of records is required if the arrested person has been charged with any offense within thirty days of his arrest. We note, however, that your question relates to Section 610.100 rather than Section 610.105. In our Opinion No. 321, *supra*, we held that, if an information has been filed charging an offense and then a new information charging the accused with a different offense is substituted for the original information, Section 610.105 would require closing (not expungement) of records pertaining to the original charge.

CONCLUSION

Therefore, it is the opinion of this office:

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1. Section 610.100, RSMo Supp. 1973, with respect to arrest records, is applicable to arrests for ordinance violations of the City of Maplewood, if such arrests were made within the geographical boundaries of such city or within the geographical boundaries of St. Louis County.

2. Section 610.100 is not applicable to situations in which the accused person has been given a summons which notifies him that charges are pending against him, but has not actually been arrested.

3. Section 610.100 does not require expungement of records pertaining to arrests for charges which have been amended to charge lesser offenses than those of which the person was originally accused, if the person was charged with any offense within thirty days of his arrest.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 321
12/10/73, Smith