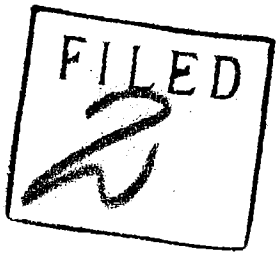
CRIMINAL PROCEDURE:
BAIL: SHERIFFS:
BAIL BOND:
SUPREME COURT RULE 32.03:

It is the opinion of this office that, under Supreme Court Rule 32.03, the sheriff is permitted but not required to admit a defendant to bail in the amount specified on the warrant.

January 14, 1960



Honorable Norman H. Anderson
Prosecuting Attorney
St. Louis County
Court House
Clayton, Missouri

Dear Mr. Anderson:

This is in response to your request of October 2, 1959, for an opinion of this office which request reads as follows:

> "This office has been requested to obtain an opinion on an interpretation of Section 32.03 of the Supreme Court Rules of Criminal Procedure. The Sheriff of St. Louis County asks whether or not it is mandatory under Supreme Court Rule 32.03 that the Sheriff or other peace officer admit a defendant to bail, under the conditions set forth in said Section, when a Circuit Judge or Magistrate is available for the purpose of setting bond."

In your subsequent letters of November 12 and November 20, you advised that the sheriff desires to know whether he could refuse to admit a defendant to bail when a boudsman appears to make bond for the defendant in a case where a warrant has been issued by a magistrate or circuit judge and the amount of the bond is endorsed on the commitment and a magistrate or circuit judge is available. You advised that it was the opinion of your office that, by using the word "may," Supreme Court Rule 32.03 permits the sheriff to admit a defendant to bail but does not make it mandatory upon him to do so.

Supreme Court Rule 32.03, Revised Statutes of Missouri, Cumulative Supplement 1957, reads as follows:

> "When the sheriff or other peace officer shall have a person under arrest and in custody by virtue of a warrant issued upon an indictment for a felony, or upon a warrant of commitment

> for failure to furnish bail, and the amount of bail is specified on the warrant, the sheriff or other peace officer may admit the defendant to bail in the amount so specified. If the defendant is under arrest and in custody by virtue of a warrant issued upon a complaint, information or indictment charging the commission of a misdemeanor, the sheriff or other peace officer may admit the defendant to bail in the amount specified upon the warrant or, if the amount of bail is not so specified and the judge or magistrate thereof is not in the county, the sheriff or other peace officer may admit the defendant to bail in an amount not less than $100.00 nor more than $1,000.00."

It is to be noted that where the defendant is under arrest and in custody by virtue of a warrant issued upon a complaint, information or indictment charging the commission of a misdemeanor, and the amount of bail is not specified on the warrant the sheriff or other peace officer may admit the defendant to bail in an amount of not less than $100.00 nor more than $1,000.00, if a judge or magistrate is not in the county. So long as the judge or magistrate is in the county, as was the situation described in your request, the sheriff has no authority to fix the amount of the bail.

The answer to your inquiry concerning the duty or obligation of the sheriff to admit a defendant to bail when the amount of the bond is endorsed on the commitment depends upon the construction placed upon the use of the word "may" by the Supreme Court in the above quoted rule.

Rule 32.03 is very similar to Section 544.560, Revised Statutes of Missouri, Cumulative Supplement 1957, which reads as follows:

> "When any sheriff or other officer shall arrest a party by virtue of a warrant upon an indictment, or shall have a person in custody under a warrant of commitment on account of failing to find bail, and the amount of bail required is specified on the warrant, or if the case is a misdemeanor, such officer may take bail, which in no case shall be less than twenty-five dollars, and discharge the person so held from actual custody."

The meaning of words used in statutes are subject to the rule of construction enunciated in Section 1.090, Revised Statutes of Missouri, Cumulative Supplement 1957, which reads as follows:

> "Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

We believe that the rule of construction enunciated in the above quoted statute is applicable to Supreme Court rules and that the words used in the rules should be taken in their plain or ordinary and usual sense.

The word "may" ordinarily means permissive or directory and operates to confer discretion, while the words "must" and "shall" are generally construed to mean mandatory, but such terms may at times be used interchangeably. 82 C.J.S. 877.

In Black's Law Dictionary, Fourth Edition, the word "may" is defined as "An auxiliary verb qualifying the meaning of another verb by expressing ability, competency, liberty, permission, possibility, probability or contingency."

We believe that it must be concluded that in Rule 32.03 the Supreme Court used the word "may" in its usual and ordinary sense. Had they intended to make the rule mandatory that the sheriff admit a defendant to bail, they would have used the word "shall" instead of the word "may." The language used in Supreme Court Rule 32.01 supports this conclusion. In Rule 32.01, it is provided that when a defendant is entitled to bail the judge or magistrate <u>shall</u> admit him to bail, but if the court is not in session the clerk of the court <u>may</u> admit the defendant to bail.

It is also to be noted that Supreme Court Rule 21.14, prior to the amendment of December 1, 1958, provided that persons arrested and held in custody without warrant shall be discharged within twenty hours unless a warrant is subsequently issued and that such a person "may be admitted to bail." The rule as amended provides that such a person "shall be entitled to be admitted to bail."

CONCLUSION

Therefore, it is the opinion of this office that, under Supreme

Honorable Norman H. Anderson

Court Rule 32.03, the sheriff is permitted but not required to admit a defendant to bail in the amount specified on the warrant.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Calvin K. Hamilton.

Yours very truly,

JOHN M. DALTON
Attorney General

CKH/cm/mls