

2328.

AUTHORITY OF POLICE OFFICERS TO TAKE FINGER PRINTS, ETC.,  
OF LIQUOR LAW VIOLATORS—STATE BUREAU OF CRIMINAL  
IDENTIFICATION IS ENTITLED TO COPIES THEREOF.

*SYLLABUS:*

*Chiefs of police, marshals and sheriffs may take finger prints, etc., of first and second offenders against the state liquor laws at their discretion, and when they exercise such discretion the superintendent of the state bureau of criminal identification and investigation is entitled to copies thereof.*

COLUMBUS, OHIO, March 31, 1925.

*Ohio State Bureau of Criminal Identification and Investigation, Mr. C. A. MYERS, Superintendent, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of March 13, 1925, as follows:

"I am in receipt of a letter from the Hon. Judge Ernest E. Zesiger of the Municipal Court at Akron, Ohio, discussing the subject of taking the finger prints and photographs of liquor law offenders.

"In view of the fact that the third offense on this charge is classed as a felony, it would enable us to identify previous arrests, thereby determining the fact whether they were first, second or third time offenders.

"House Bill No. 98, Section 1841-18, I find that upon the arrest of any person for any felony, the state authorities must furnish this department with finger prints and photographs.

"Kindly advise me if I would be within the law, in requesting sheriffs and police chiefs to forward to this bureau prints and photos of first and second violators of the liquor law."

Section 1841-15, General Code, (110 O. L. p. 5) reads:

"The superintendent shall procure and file for record photographs, pictures, descriptions, finger prints, measurements and such other information as may be pertinent, of all persons who have been or may hereafter be convicted of felony within the state, and of all well known and habitual criminals from wherever procurable, and it shall be the duty of the person in charge of any state institution to furnish any such material to the superintendent of the state bureau of criminal identification upon the request of the superintendent. The superintendent shall co-operate with and assist sheriffs, chiefs of police and other law officers in the establishment of a complete state system of criminal identification and in obtaining finger prints and other means of identification of all persons arrested on a charge of felony. He shall also file for record the finger print impressions of all persons confined in any workhouse, jail, reformatory, penitentiary, for the violation of state laws, and such other information as he may receive from law enforcement officials of the state and its subdivisions."

Section 1841-17, General Code, (109 O. L. 585), is as follows:

"The sheriff, chief of police or other person in charge of each prison, workhouse, reformatory or penitentiary shall send finger print impressions

and such other descriptive measurements as the superintendent may require on forms furnished by him, to this bureau, to be filed, classified and preserved."

Section 1841-18, General Code, (110 O. L. 6), reads as follows :

"It is hereby made the duty of the sheriffs of the several counties of the state, the chiefs of police of cities and marshals of villages therein immediately upon the arrest of any person for any felony, to take his finger prints according to the finger print system of identification on the forms furnished by the superintendent, and forward the same, together with such other description as may be required and with the history of the offense committed, to the bureau to be classified and filed, but should any accused be found not guilty of the offense charged, then said finger prints and description shall be given to the accused upon his request. And the superintendent of the state bureau of criminal identification shall report any dereliction in the performance of this duty by any sheriff, chief of police, or marshal, or any dereliction in the duty imposed upon any person having charge of a state institution as provided in section 1841-15 of the General Code, to the governor, who shall make immediate investigation thereof, and upon the order of the governor the proper disbursing officer shall not issue any salary voucher or pay voucher to any said official found by the governor to be derelict in the performance of the duties provided by this enactment until such dereliction has been corrected. The superintendent shall compare the descriptions received with those already on file in the bureau, and if he finds that the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the arresting officer of such fact; and in order to facilitate the work of identification, the name or names under which each person whose identification is thus filed is known, shall be alphabetically indexed by the superintendent.

"The provisions of this section shall not apply to violators of city ordinances or those arrested for misdemeanors, unless the officers have reason to believe that he is an old offender, or where it is deemed advisable for the purpose of subsequent identification."

Section 1841-15, General Code, says the superintendent "shall *procure* and *file* for record \* \* \* finger prints," etc. This means, from the language used, that he shall procure them, after conviction, in *felony* cases, and those of well known and habitual criminals, from such officers as have them and have a right to take such finger prints, but does not authorize the superintendent to take such prints himself.

Said section further says it shall be the duty of the person in charge of any *state* institution to furnish same to the superintendent.

All of the above refers to felony cases after conviction, and to the prints, etc., of well known and habitual criminals, and gives no authority to the superintendent or other officer to take prints, etc., in misdemeanor cases, but merely makes it his duty to file prints, etc., mentioned in said section, if he can procure them.

This section further provides that he shall "*file* for record the finger print impressions of all persons confined in any *workhouse, jail, reformatory, penitentiary*, for the violation of any *state laws*, and such other information *as he may receive* from law enforcement officials of the state and its subdivisions."

This provision says the superintendent shall "*file*" but does not authorize him or any one else to "*take*" prints, etc., and imposes no duty nor authority on chiefs, marshals or sheriffs to take them.

Therefore, the superintendent can only file such as he may be able to procure.

The only duty imposed on sheriffs, chiefs and marshals to take prints is that set forth in section 1841-18 (110 O. L. 6), and imposes such duty in felony cases only, and refers to felony cases when it refers to "dereliction of \* \* \* duty" of such sheriff, chief and marshal.

The only reference we have to a chief, sheriff or marshal taking prints, etc., in misdemeanors, is the following paragraph of Section 1841-18, General Code (110 O. L. 6), which reads as follows:

"The provisions of this section shall not apply to violators of city ordinances or those arrested for misdemeanors, unless the officers have reason to believe that he is an old offender, or where it is deemed advisable for the purpose of subsequent identification."

Up to this paragraph there appears to be no duty or authority to take prints, etc., in misdemeanors, so we must look to the rules of construction to see if this paragraph can be construed, with the other sections of law, to authorize or compel the taking of prints, etc., by chiefs, marshals and sheriffs, in order to properly answer your question; and in answering it, I am going on the assumption that you mean to ask if you can *compel* these officers to furnish you with such records.

Black on Interpretation of Laws says, on pages 35 and 36:

"The object of all interpretation and construction of statutes is to ascertain the meaning and intention of the legislature, to the end that the same may be enforced."

"This meaning and intention must be sought first of all in the language of the statute itself. For it must be presumed that the means employed by the legislature to express its will are adequate to the purpose and do express that will correctly."

"If the language of the statute is plain and free from ambiguity, and expresses a single, definite, and sensible meaning, that meaning is conclusively presumed to be the meaning which the legislature intended to convey. In other words, the statute must be interpreted literally. Even though the court should be convinced that some other meaning was really intended by the law-making power, and even though the literal interpretation should defeat the very purposes of the enactment, still the explicit declaration of the legislature is the law, and the courts must not depart from it."

"If the language of the statute is ambiguous, or lacks precision, or is fairly susceptible of two or more interpretations, the intended meaning of it must be sought by the aid of all pertinent and admissible considerations. But here, as before, the object of the search is the meaning and intention of the legislature, and the court is not at liberty, merely because it has a choice between two constructions, to substitute for the will of the legislature its own ideas as to the justice, expediency, or policy of the law."

And on page 60:

"Statutes should be so construed, if possible, as to give effect to all of their clauses and provisions; and each statute should receive such a construction as will make it harmonize with the pre-existing body of law. Antagonism between the act to be interpreted and the previous laws, whether statutory or unwritten, is to be avoided, unless it was clearly the intention of the legislature that such antagonism should arise."

On page 62 the same author says:

"Every statute is understood to contain, by implication, if not by its express terms, all such provisions as may be necessary to make effective the rights, powers, privileges, or jurisdiction which it grants, and also all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms."

On page 84:

"Words may be interpolated in a statute, or silently understood as incorporated in it, where the meaning of the legislature is plain and unmistakable, and such supplying of words is necessary to carry out that meaning and make the statute sensible and effective."

And on page 106:

"It is presumed that the legislature intends to impart to its enactments such a meaning as will render them operative and effective, and to prevent persons from eluding or defeating them. Accordingly, in case of any doubt or obscurity, the construction will be such as to carry out these objects."

And on page 150:

"As a general rule, relative, qualifying, or limiting words or clauses in a statute are to be referred to the next preceding antecedent, unless the context, or the evident meaning of the enactment, requires a different construction."

While the last paragraph of Section 1841-18, General Code, says specifically that the section shall not apply to misdemeanors, it does, indirectly, say that, when a sheriff, marshal or chief has reason to believe he is an old offender, etc., it is his duty to take such prints. And this section seems to distinguish between the "*taking*" of prints and the "*procuring*" of prints, and this is the only section in which the word "take" is used and is the only provision found in this law for taking prints.

Giving the section this construction, which would be a proper one to carry out the apparent intent of the legislature, it would leave the taking of such records in the *discretion* of such officers, and you, as superintendent, could not compel their taking them.

However, if they exercise this discretion, you could, by the authority given you in section 1841-17, General Code, compel them to send you such records as you might require, and the ones you might require are those mentioned in Section 1841-15, General Code.

It is my opinion, therefore, that said section 1841-18 gives police chiefs, marshals and sheriffs authority to take prints, etc., of first and second offenders in liquor law cases, at their discretion, and if they exercise their discretion and take them you can legally require them to furnish you with copies.

Respectfully,

C. C. CRABBE,

*Attorney General.*