

1976

ARREST—HEARING—BAIL—MOTOR VEHICLE VIOLATIONS
—ARRESTING OFFICERS, DUTY TO TAKE BEFORE A
MAGISTRATE—SETTING OF BAIL—RESIDENTS, NON-RESI-
DENTS OF OHIO—§§4513.39, 4549.17 R.C.—CHAPTERS 2935.,
2937., R.C.

SYLLABUS:

1. A state highway patrolman, a sheriff or his deputy, making an arrest on a state highway, or a constable making an arrest on a road other than a state highway, who arrests a resident of Ohio for any of the traffic offenses amounting to a misdemeanor and included within the provisions of Section 4549.17, Revised Code, if a judicial officer is not accessible, must release the accused from custody upon the accused giving his name and address to such officer; and such officer must notify the accused to appear before the most accessible magistrate, naming the magistrate and specifying the date, place and hour for appearance.

2. A state highway patrolman, a sheriff or his deputy, making an arrest on a state highway, or a constable making an arrest on a road other than a state highway, who arrests a non-resident of Ohio for any of the offenses amounting to a misdemeanor and included under the provisions of Section 4549.17, Revised Code, if a judicial officer is not accessible, is authorized by such section to require security for the future appearance of the accused and to fix the amount of such security, subject, however, to the right of the accused to be released upon depositing the motor vehicle in lieu of bail as provided in such section. (Opinion No. 1379, Opinions of the Attorney General for 1957, p. 711, distinguished.)

3. A state highway patrolman, a sheriff or his deputy, making an arrest on a state highway, or a constable making an arrest on a road other than a state highway, who arrests a person for the violation of those sections of the motor vehicle laws for which the special hearing and bail provisions of Section 4549.17, Revised Code, must comply with the procedure provided therein, unless the issuance of a warrant is necessary. Where the provisions of Section 4549.17, Revised Code, do not apply, the arresting officer may detain the accused until a warrant can be obtained as provided in Section 2935.03, Revised Code, but, when the arrest has been made without a warrant, the officer must, without unnecessary delay, take the accused before a court or magistrate as provided in Section 2935.05, Revised Code.

4. When a non-resident of Ohio is arrested for any of the traffic offenses amounting to a misdemeanor and included under the provisions of Section 4549.17, Revised Code, if a judicial officer is not accessible, and if the accused cannot furnish bail in the amount fixed by the arresting officer, and if the accused does not leave the motor vehicle in lieu of bail, the arresting officer must take the accused before some officer authorized to fix and accept bail as provided in Chapter 2937., Revised Code; when no such officer authorized to accept bail as provided in Chapter 2937., Revised Code, is accessible, the arresting officer, by virtue of Chapter 2935., Revised Code, has authority to detain the accused until such time as he can be brought before a judge or magistrate as provided in Section 2935.05, Revised Code.

5. A sheriff or jailer is authorized to confine an accused in jail for a violation of the motor vehicle laws only (1) upon the receipt of a commitment issued under the authority of Section 2937.32, Revised Code, or (2) upon an arrest without a

warrant, *unless the provisions of Section 4549.17, Revised Code, apply*, until such time as the accused can be brought before a judge or magistrate as provided in Section 2935.05, Revised Code.

6. A summary of the procedures to be observed under the provisions of Section 4549.17, *supra*, is as follows:

- A. Section 4549.17, Revised Code, provides for the release, with or without bail of persons accused of violating the traffic laws which violations amount to misdemeanors, of both residents and non-residents of this state.
- B. A resident of Ohio, arrested for any such traffic misdemeanor, should be:
 - (1) taken before a magistrate having jurisdiction for an immediate hearing.
 - (2) if no hearing can be had, admitted to bail by such magistrate, who shall then designate a time for hearing.
 - (3) if no judicial officer (magistrate) is accessible, released by the arresting officer upon giving his name and address, the arresting officer naming the magistrate, time, place, and date of hearing.
- C. A non-resident of Ohio, arrested for any such traffic misdemeanor, should be:
 - (1) taken before a magistrate having jurisdiction for an immediate hearing.
 - (2) if no hearing can be had, admitted to bail by such magistrate, who shall then designate a time for hearing.
 - (3) if no judicial officer (magistrate) is accessible, released upon giving bail in amount fixed by the arresting officer, or depositing the motor vehicle, the arresting officer then designating the magistrate, time, place and date of hearing.
 - (4) if no judicial officer (magistrate) is accessible, and if the accused cannot give bail in the amount fixed by the arresting officer and does not leave the motor vehicle in lieu of bail, taken before a clerk or deputy clerk of a court of record to fix bail.
 - (5) if no judicial officer (magistrate) is accessible, and if the accused cannot furnish the bail fixed by the arresting officer and does not leave the motor vehicle in lieu of bail and if the accused cannot furnish the bail fixed by the clerk or deputy clerk of a court of record, confined until he can be taken before a court or magistrate as provided in Section 2935.05, Revised Code.

Columbus, Ohio, April 18, 1958

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

“Assuming a person is arrested for a violation of a traffic law by a State Patrolman or a Constable in the late hours of the day and at which time no County Court Judge is available to issue a commitment. May the Sheriff at the request of the arresting officer, lock the accused up in the county jail until a warrant can be issued and a commitment secured which would normally be after the opening of the County Court the following morning. I am also assuming of course that the accused is unable to post a bond.”

I invite your attention initially to certain pertinent statutory provisions. Section 4513.39, Revised Code, reads as follows:

“The state highway patrol and sheriffs or their deputies shall exercise, to the exclusion of all other peace officers except within municipal corporations, the power to make arrests for violations, on all state highways, of sections 4503.11, 4503.21, 4511.14 to 4511.16, inclusive, 4511.20 to 4511.24, inclusive, 4511.26 to 4511.40, inclusive, 4511.42 to 4511.48, inclusive, 4511.58, 4511.59, 4511.62 to 4511.71, inclusive, 4513.03 to 4513.13, inclusive, 4513.15 to 4513.22, inclusive, 4513.24 to 4513.34, inclusive, 4549.01, 4549.04, and 4549.07 to 4549.12, inclusive, of the Revised Code.”

Section 4549.17, Revised Code, reads as follows:

“A person arrested without a warrant because of the violation of any of the provisions of Chapter 4501., 4503., 4505., 4507., 4509., 4511., 4513., 4517., and 4549., inclusive, of the Revised Code, or of a provision of any ordinance substantially corresponding to any provision of the said Chapters, punishable solely as a misdemeanor, shall without delay be taken before a magistrate having jurisdiction and shall be entitled to an immediate hearing or to give bail in any one of the forms as provided and defined in sections 2937.21 to 2937.45, inclusive, of the Revised Code, without the necessity of a warrant being issued. If such hearing cannot be had, said person shall be released from custody on giving his personal undertaking to appear in answer for such violation at such time or place as shall then be indicated; his future appearance shall be secured, if security is required by the judicial officer, by a deposit of bail as provided and defined in Sections 2937.21 to 2937.45, inclusive, of the Revised Code, in an amount to be set by the judicial officer, or in lieu thereof, if he is the owner, by leaving the motor vehicle. If the arrested person is not the owner, he can leave the motor vehicle with a written consent given at the time by the owner, who must be present before such judicial officer.

“If a judicial officer is not accessible, the accused person, if a resident of the state, shall forthwith be released from custody

by giving his name and address to the officer making the arrest and such officer shall notify the person arrested to appear before the most accessible magistrate, naming such magistrate and specifying the date, place and hour for appearance; or if the accused person is a nonresident, he shall forthwith be released from custody by giving his name and address to the officer making the arrest and if security is required, depositing, or having deposited on his behalf, with such officer bail as provided and defined in sections 2937.21 to 2937.45, inclusive, of the Revised Code, in an amount not to exceed the maximum fine for the offense for which such arrest is made or instead, if he is the owner, by leaving the motor vehicle. If the nonresident accused is not the owner, he can leave the motor vehicle with a written consent given at the time by the owner, who must be present. The officer making the arrest shall give a receipt in writing for the bail, or the vehicle deposited, and notify the person arrested to appear before the most accessible magistrate, naming such magistrate and specifying the date, place and hour for appearance.

“In the case such undertaking, bail, or a deposit, is not made as provided by this section, sections 2937.01 to 2937.45, inclusive, chapter 2937. of the Revised Code, in reference to preliminary examination and bail in cases of misdemeanor, shall apply.

“Provided that no person arrested for a violation of section 4511.19 of the Revised Code shall have the benefit of the provisions of this section.

“Nothing in this section shall be construed as preventing the execution of a warrant for the arrest of a person in other cases of misdemeanors when the same may be necessary.”

Section 4513.39, *supra*, places a definite restriction upon certain police personnel in making arrests on state highways outside municipal corporations for the violation of the enumerated and included sections.

The language of Section 4549.17, *supra*, prescribes the procedure for hearing and bail in cases of violations of certain designated statutory provisions relative to the operation of motor vehicles. This section being a specific statute with regard to hearing and opportunity to give bail, its provisions are intended to prevail over the general provisions of Chapter 2937., Revised Code. See 37 Ohio Jurisprudence, 150, *et seq.*

You have assumed in your inquiry that no county court judge is available at the time of arrest that is made by an officer having authority to make such arrest. It should be noted, however, that the term “magistrate” as used in the statutes here involved has reference not only

to county court judges, but to certain other judicial officers as well. Section 2931.01, Revised Code, reads as follows:

“As used in Chapters 2931. to 2953., inclusive, of the Revised Code:

“(A) ‘Magistrate’ includes county court judges, police judges or justices, mayors of municipal corporation(s), and judges of other courts inferior to the court of common pleas.”

For the purpose of ascertaining the judicial officers included within the term “magistrates” I deem it justifiable to resort to this definition in Section 2931.01, Revised Code, since Section 2937.01, Revised Code, adopts the definition of Section 2931.01, *supra*. Since Chapter 2937., Revised Code, deals with preliminary examination and bail, and since Section 4549.17, *supra*, is merely a special statute providing for a special procedure for bail and hearing in cases of violation of certain designated statutes, reason and logic would appear to require that the same officers should constitute the common classification. See 37 Ohio Jurisprudence, 538, 539.

Section 4549.17, *supra*, quite plainly states that a person arrested for any of the enumerated violations:

“* * * shall without delay be taken before a *magistrate* having jurisdiction and shall be entitled to an *immediate hearing or to give bail* * * *” (Emphasis added).

It is to be noted that mayors of municipal corporations, as provided in Chapter 1905., and in Section 1907.031, Revised Code, have jurisdiction to fix bail and retain jurisdiction to hear prosecutions for misdemeanors until January 1, 1960. The accused is to be committed to jail only if he cannot furnish the bail required by the judicial officer. See Section 2937.32, Revised Code.

Section 4549.17, *supra*, further provides for the situation when an immediate hearing cannot be had. If such is the case, the accused:

“* * * shall be released from custody on giving his personal undertaking to appear in answer to such violation at such time or place as shall then be indicated; his future appearance shall be secured *if security is required by the judicial officer* (magistrate), * * *” (Parenthetical matter and emphasis added)

This provision allows an owner, or operator if the owner is present, of a motor vehicle to have such motor vehicle serve as security for the

appearance of the accused, such vehicle being deposited in lieu of bail upon the *offer* of the vehicle by the accused. This specific provision, if rendered operative by the offer of the owner, or of operator with consent of the owner, who is present before such judicial officer, would have the effect of precluding any commitment as provided in Section 2937.32, Revised Code.

Section 4549.17, *supra*, further provides :

“If a judicial officer (magistrate) is not accessible, the accused person, *if a resident of the state, shall forthwith be released* from custody by giving his name and address to the officer making the arrest and such officer *shall* notify the person arrested to appear before the *most accessible magistrate*, naming such magistrate and *specifying the date, place and hour* for appearance; * * *” (Parenthetical matter and emphasis added)

If the accused is a non-resident of the state the following provisions of Section 4549.17, *supra*, become operative when no judicial officer is accessible:

“* * * if the accused person is a nonresident, he shall forthwith be released from custody by giving his named and address to the officer making the arrest and *if security is required*, depositing, or having deposited on his behalf, *with such officer bail* as provided and defined in sections 2937.21 to 2937.45, inclusive, of the Revised Code, *in an amount not to exceed the maximum fine for the offense for which such arrest is made* or instead, if he is the owner, by leaving the motor vehicle. If the nonresident accused is not the owner, he can leave the motor vehicle with a written consent given at the time by the owner, who must be present. *The officer making the arrest shall give a receipt in writing for the bail*, or the vehicle deposited, and notify the person arrested to appear before the most accessible magistrate, naming such magistrate and specifying the date, place and hour for appearance.” (Emphasis added)

It is apparent from the above provision that the words “if security is required”, if they are to be given any effect whatever, must by implication give *the arresting officer* authority to require security from a non-resident when a judicial officer is inaccessible.

This provision is quite clearly to be applied only in those cases in which a judicial officer is *not* accessible. It follows, therefore, that if the accused is to be released upon giving his name and address to the arresting officer, and the arresting officer cannot require security for the

future appearance of the accused, the language immediately following the phrase "if security is required" is rendered wholly inoperative and without effect whatever. This cannot have been the intention of the General Assembly.

It is also to be noted that the language of former Section 4549.17, Revised Code, provided on this point:

"If a judicial officer is not accessible, the accused person shall forthwith be released from custody by giving his name and address to the officer making the arrest *and depositing with such officer* a sum equal to the maximum fine for the offense for which such arrest is made or instead, if he is the owner, by leaving the motor vehicle. If the accused is not the owner, he can leave the motor vehicle with a written consent given at the time by the owner, who must be present." (Emphasis added)

It would seem clear that the amendment to Section 4549.17, Revised Code, had the purpose of making a distinction between residents and non-residents. Under the former provisions, the deposit in the amount of the maximum fine was required for the accused, be he a resident of Ohio or a non-resident of this state. Because the arresting officer is the only officer who is in a position to require security, the statute must be given effect in accord with its language and purpose.

It is by no means novel that the law should authorize a law enforcement officer to require and fix the amount of security for the appearance of an accused. See Section 4549.17, Revised Code, as effective prior to September 30, 1955. Attention is invited, also, to Section 2937.35, Revised Code, which reads as follows:

"A sheriff, deputy sheriff, marshal, deputy marshal, watchman, or police officer charged with the execution of a warrant on an indictment or information for a misdemeanor, during the vacation of the court, and also in term time of such court when it is not in actual session may take the recognizance of the person so charged together with sufficient sureties, in a sum not less than fifty nor more than five hundred dollars for the appearance of such person, if in vacation, on the first day of the next term of such court, or if in term time of such court, on the first day thereof when such court shall be in actual session. For the purposes of such recognizance, such officer may administer oaths to the proposed sureties, or accept personal property in lieu of real property bonds, and such officer shall make a return on such warrants, and file such recognizance without delay with the clerk of the court of common pleas."

The following language from 37 Ohio Jurisprudence, pp. 611-616, states the rule:

“It is a general principle, which is embodied in the maxim *ut res magis valeat quam pereat*, that the courts should, if reasonably possible, so construe a statute, or a section thereof, as to give it effect. In order to comply with these principles, the courts should strive to give effect not only to the statute as a whole, but to the several parts as well. The presumption is that every word in a statute is designed to have some effect. Therefore, an attempt should be made to give effect to each and every word, phrase, clause, and provision. Sometimes, however, it is not possible, in arriving at the meaning of statutes, to give force and effect to every word and phrase used. That an act shall be construed so as to give every line effect is of less importance than that it shall not be so construed as to be contrary to what, from the act itself, appears to have been the legislative intent.”

“*To interpret a law as to make it wholly nugatory is the last extremity to which judicial construction should go.* When the act or section under consideration is equally susceptible of two constructions, one of which will maintain and the other destroy it, the courts should adopt the former. Accordingly, an interpretation should, if possible, be avoided, under which the statute or section or any part thereof is nullified, or, as otherwise expressed, defeated, abrogated, rendered useless, idle, needless, unnecessary, vain, nugatory, inoperative, void, meaningless, or, in general, without effect or significance. * * *” (Emphasis added)

It is my conclusion, therefore, that the arresting officer can require security of a non-resident of Ohio under Section 4549.17, *supra*, when a judicial officer (magistrate) is not accessible. The bail cannot exceed the maximum fine for the offense for which the arrest is made, and it must be in one of the forms as provided and defined in Sections 2937.21 to 2937.45, inclusive, Revised Code. The arresting officer, in fixing the amount of bail, should follow the provisions of Section 2937.22, Revised Code; and a non-resident, may deposit a motor vehicle with such officer in lieu of bail as provided in Section 4549.17, Revised Code.

It is only when none of the preceding provisions is operative that the hearing and bail provisions of Chapter 2937., Revised Code, control. See Opinion No. 1379, Opinions of the Attorney General for 1957, p. 711.

In Opinion No. 1379, *supra*, I held that a deputy clerk of a municipal court could fix bail, under authority of Section 2937.22, Revised Code, in

cases involving violations of certain statutes relating to the operation of motor vehicles. In arriving at this conclusion I relied upon the third paragraph of Section 4549.17, *supra*, which reads:

“In case such undertaking, bail, or a deposit, is not made as provided by this section, sections 2937.01 to 2937.45, inclusive, chapter 2937 of the Revised Code, in reference to preliminary examination and bail in cases of misdemeanor, shall apply.”

In that opinion, however, I was not concerned with the authority of the arresting officer to require and fix bail, but rather with the authority of a deputy clerk of courts.

Here we may note that the succeeding paragraph withholds application of Section 4549.17, *supra*, when an accused is arrested for violating Section 4511.19, Revised Code. That section makes it unlawful for a person under the influence of intoxicating liquor, narcotic drugs, or opiates, to operate a motor vehicle.

The concluding paragraph of Section 4549.17, Revised Code, provides that nothing therein is to prevent the execution of a warrant for the arrest of a person as in the cases of other misdemeanors when the execution of a warrant may be necessary.

Other general statutory requirements for detection and arrest are found in Chapter 2935., Revised Code. The following sections are here pertinent:

Section 2935.03, Revised Code:

“A sheriff, deputy sheriff, marshal, deputy marshal, watchman, or police officer shall arrest and detain a person found violating a law of this state, or an ordinance of a municipal corporation, until a warrant can be obtained.

“A constable within the limits of the township in which said constable has been appointed or elected, shall arrest and detain a person found by him in the commission of a misdemeanor, either in violation of a law of this state or an ordinance of a village, until a warrant can be obtained.”

Section 2935.05, Revised Code:

“When a sheriff, deputy sheriff, marshal, deputy marshal, watchman, or police officer has arrested a person without a warrant, he must, without unnecessary delay, take the person arrested before a court or magistrate having jurisdiction of the offense,

and must make or cause to be made before such court or magistrate a complaint stating the offense for which the person was arrested.”

The provisions of Chapter 2937., Revised Code, then come into operation with regard to preliminary examination and bail. I find authority for a commitment of the accused only in Section 2937.32, Revised Code:

“If an offense is not bailable or sufficient bail is not offered, the accused shall be committed to the jail of the county in which he is to be tried.”

The accused may be arrested and detained by an officer under Section 2935.03, Revised Code, only until a warrant can be obtained; and the officer must, without unnecessary delay, take the accused before a court or magistrate as provided in Section 2935.05, Revised Code.

The question of whether the sheriff may place an accused in jail until a hearing can be had is answered in part from the foregoing discussion. If, as provided in Section 4549.17, Revised Code, an accused cannot be taken before a magistrate for the reason that none is accessible, the accused, if a resident of the state, cannot be detained by the arresting officer after he has given his name and address. If the arresting officer is not authorized to detain the accused, the sheriff could hardly be justified in placing the accused in jail.

If the accused is a non-resident of Ohio, and cannot furnish the bail required and fixed by the arresting officer, the provisions of Chapter 2937., Revised Code, apply. In Opinion No. 1379, *supra*, I held that a deputy clerk of a municipal court could set bail under the authority of Section 4549.17., *supra*, by reason of the incorporation by reference of the provisions of Chapter 2937., Revised Code. If a clerk of a court of record is available, the arresting officer is required, by virtue of the provisions of Section 4549.17, *supra*, to take the accused before such clerk or his deputy in order to give bail. When the accused cannot furnish the bail fixed by the arresting officer, the requirement that the arresting officer take the accused before a clerk of a court of record does not require a vain act for the amount fixed by such clerk or deputy may well be less than that fixed by the arresting officer. Since the law favors release on bail pending hearing, the opportunity of every person to be released upon giving bail is to be preserved if at all possible.

When the provisions of Section 4549.17, *supra*, are not operative, Section 2935.03, Revised Code, authorizes the enumerated peace officers to arrest and detain an accused until a warrant can be issued. Upon making the arrest the accused must be taken, without unnecessary delay, before a judge or magistrate as provided in Section 2935.05, Revised Code. The sheriff, in placing the accused in jail before taking him before a judge or magistrate as provided in such section, is authorized to hold the accused subject to the limitation of unnecessary delay. What length of time constitutes an unnecessary delay would appear to be a factual determination to be made in each particular case.

Accordingly, in light of the factual situation you have described, and the existing statutory provisions, it is my opinion and you are accordingly advised that:

1. A state highway patrolman, a sheriff or his deputy, making an arrest on a state highway, or a constable making an arrest on a road other than a state highway, who arrests a resident of Ohio for any of the traffic offenses amounting to a misdemeanor and included within the provisions of Section 4549.17, Revised Code, if a judicial officer is not accessible, must release the accused from custody upon the accused giving his name and address to such officer; and such officer must notify the accused to appear before the most accessible magistrate, naming the magistrate and specifying the date, place and hour of appearance.

2. A state highway patrolman, a sheriff or his deputy, making an arrest on a state highway, or a constable making an arrest on a road other than a state highway, who arrests a non-resident of Ohio for any of the offenses amounting to a misdemeanor and included under the provisions of Section 4549.17, Revised Code, if a judicial officer is not accessible, is authorized by such section to require security for the future appearance of the accused and to fix the amount of such security, subject, however, to the right of the accused to be released upon depositing the motor vehicle in lieu of bail as provided in such section. Opinion No. 1379, Opinions of the Attorney General for 1957, p. 711, distinguished:

3. A state highway patrolman, a sheriff or his deputy, making an arrest on a state highway, or a constable making an arrest on a road other than a state highway, who arrests a person for the violation of those sections of the motor vehicle laws for which the special hearing and bail provisions of Section 4549.17, Revised Code, apply, must comply

with the procedure provided therein, unless the issuance of a warrant is necessary. Where the provisions of Section 4549.17, Revised Code, do not apply, the arresting officer may detain the accused until a warrant can be obtained as provided in Section 2935.03, Revised Code, but, when the arrest has been made without a warrant, the officer must, without unnecessary delay, take the accused before a court or magistrate as provided in Section 2935.05, Revised Code.

4. When a non-resident of Ohio is arrested for any of the traffic offenses amounting to a misdemeanor and included under the provisions of Section 4549.17, Revised Code, if a judicial officer is not accessible, and if the accuser cannot furnish bail in the amount fixed by the arresting officer, and if the accused does not leave the motor vehicle in lieu of bail, the arresting officer must take the accused before some officer authorized to fix and accept bail as provided in Chapter 2937., Revised Code; when no such officer authorized to accept bail as provided in Chapter 2937., Revised Code, is accessible, the arresting officer, by virtue of Chapter 2935., Revised Code, has authority to detain the accused until such time as he can be brought before a judge or magistrate as provided in Section 2935.05, Revised Code.

5. A sheriff or jailer is authorized to confine an accused in jail for a violation of the motor vehicle laws only (1) upon the receipt of a commitment issued under the authority of Section 2937.32, Revised Code, or (2) upon an arrest without a warrant, *unless the provisions of Section 4549.17, Revised Code, apply*, until such time as the accused can be brought before a judge or magistrate as provided in Section 2935.05, Revised Code.

6. A summary of the procedures to be observed under the provisions of Section 4549.17, *supra*, is as follows:

A. Section 4549.17, Revised Code, provides for the release, with or without bail of persons accused of violating the traffic laws which violations amount to misdemeanors, of both residents and non-residents of this state.

B. A resident of Ohio, arrested for any such traffic misdemeanor, should be:

(1) taken before a magistrate having jurisdiction for an immediate hearing.

- (2) if no hearing can be had, admitted to bail by such magistrate, who shall then designate a time for hearing.
 - (3) if no judicial officer (magistrate) is accessible, released by the arresting officer upon giving his name and address, the arresting officer naming the magistrate, time, place, and date of hearing.
- C. A non-resident of Ohio, arrested for any such traffic misdemeanor, should be :
- (1) taken before a magistrate having jurisdiction for an immediate hearing.
 - (2) if no hearing can be had, admitted to bail by such magistrate, who shall then designate a time for hearing.
 - (3) if no judicial officer (magistrate) is accessible, released upon giving bail in amount fixed by the arresting officer, or depositing the motor vehicle, the arresting officer then designating the magistrate, time, place and date of hearing.
 - (4) if no judicial officer (magistrate) is accessible, and if the accused cannot give bail in the amount fixed by the arresting officer and does not leave the motor vehicle in lieu of bail, taken before a clerk or deputy clerk of a court of record to fix bail.
 - (5) if no judicial officer (magistrate) is accessible, and if the accused cannot furnish the bail fixed by the arresting officer and does not leave the motor vehicle in lieu of bail and if the accused cannot furnish the bail fixed by the clerk or deputy clerk of a court of record, confined until he can be taken before a court or magistrate as provided in Section 2935.05, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General