

## Opinion No. 39-3255

August 23, 1939

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Mr. Tom Summers, Chief, N.M. State Police, Santa Fe, New Mexico. Attention: A. B. Martinez, Captain

{\*96} In your letter of August 18th you ask what steps can be taken by your department when citations are issued for violations of the various laws and the persons to whom these citations are given fail to obey them.

Subsection (a) of Section 11-863 of the 1929 Compilation, relative to automobile and motor vehicles, provides: whenever any person is arrested for a violation of the automobile and motor vehicle act punishable as a misdemeanor, a person when cited for a violation may give the arresting officer a written promise to appear at such time and place forthwith and be released from custody. If the person refuse to give such written promise to appear he shall then be taken immediately by the arresting officer before the nearest or most accessible magistrate.

Any person who wilfully violates his written promise to appear, given in accordance {\*97} with this section, shall be guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested.

Subsection (c) provides that the provisions of subsection (a) of said section shall not apply to any person arrested and charged with an offense causing or contributing to an accident resulting in injury or death to any person; nor to any person charged with reckless driving or driving in excess of thirty miles per hour within a business or residence district, or in excess of fifty miles per hour outside of a business or residence district; nor to any person charged with reckless driving or driving while under the influence of intoxicating liquor or narcotic drugs; nor to any person whom the arresting officer shall have good cause to believe has committed any felony; and the arresting officer shall take such person forthwith before the nearest or most accessible magistrate.

5 C.J., at page 436, Section 77, provides that a peace officer may, without process, arrest one who has escaped from his custody after a lawful arrest, whether with or without a warrant at least, unless such escape was voluntary although it has been held to be immaterial that the escape was voluntary and to that end may, if necessary, break doors after demanding and being refused admittance.

As to negligent escape, as cited in Reg. vs. O'Herron, 5 Can. Cr. Cas. 531, where at the most, the escape was due to negligence on the part of the officer, and he did not contemplate a voluntary abandonment of his prisoner, but negligently trusted to the

latter's promise to surrender himself under the warrant, he might be rearrested under the same warrant.

In *Rex vs. McGillivray*, 41 N.S. 321, it was held that illegal release on bail amounts to a negligent escape and the prisoner may be retaken.

It is my opinion that if your department issues citations for violations of the various laws and the persons to whom these citations are given fail to obey them, that said persons may be rearrested under the original citation.