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“(f) Who cannot attend the polls on election day because of being confined in jail *awaiting arraignment or trial.*” [emphases added]

As to the constitutional issue of whether a convict confined in jail or prison may be denied the right to vote, in *Richardson v Ramirez*, 418 US 24; 94 S Ct 2655; 41 L Ed 2d 551 (1974), the United States Supreme Court upheld California constitutional and statutory provisions denying the franchise to persons convicted of felonies. In *Richardson*, disenfranchisement was not limited to persons confined in a jail or a prison or to persons on parole under an existing sentence, but continued until restored by court order after the completion of probation or, if a prison term was served, an executive pardon after completion of rehabilitation proceedings. The United States Supreme Court found no denial of equal protection of the laws under US Const, Am XIV.

In summary, it is my opinion that inmates legally convicted, sentenced and confined in a jail or prison may not vote.

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ARREST: Obligation of sheriff to accept custody of a prisoner arrested without a warrant.

SHERIFF: Obligation of sheriff to accept custody of a prisoner arrested without a warrant from a law enforcement officer.

A law enforcement officer who arrests an individual without warrant must bring him or her before a magistrate as soon as it is reasonably possible to do so.

Where a law enforcement officer requests a sheriff to accept custody of a prisoner arrested without warrant, the sheriff may accept custody of the prisoner if he forms a reasonable belief that the law enforcement officer acted in good faith and is unable to bring the prisoner before the magistrate for arraignment. The sheriff may, however, refuse to accept custody of the prisoner arrested without warrant.

Opinion No. 5014

November 4, 1976.

Honorable Ralph Ostling
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion as to (1) whether a sheriff is obligated to accept a prisoner from a law enforcement officer where the prisoner has been arrested without warrant, and (2) if so, whether the sheriff may review the facts leading up to the arrest to determine whether the officer had reasonable grounds to make the arrest without warrant.

II OAG, 1956, No 2124, p 309 (June 7, 1956) discusses the course of conduct required of a sheriff to protect himself from the liability for a false imprisonment action where an arrest had been made without a warrant and the person arrested was being held in the county jail on the sole authority of the arresting officer. The opinion concluded that a sheriff may accept a prisoner from a peace officer without a court order of commitment and that his liability in a civil action for false imprisonment would turn upon whether he acted reasonably and in good faith under the particular facts and circumstances. The opinion states, however:

"In such a situation the arresting officer can only deliver the person under arrest to the nearest sheriff, with the request that such person be retained in custody until he can be arraigned and committed. . . ."
II OAG, 1956, No 2214, p 309, 310, *supra*.

The opinion also stated that a law enforcement officer who arrests an individual without warrant is charged with the responsibility of bringing the arrested individual before a magistrate as soon as it is reasonably possible to do so in order that an offense may be charged, bail may be fixed, and arrangements for trial made. Thus, inasmuch as a law enforcement officer is authorized to arrest a person without a warrant as set forth in 1927 PA 175, ch IV, § 15; MCLA 764.15; MSA 28.874, a sheriff may accept custody of the prisoner if he is able to form a reasonable belief that the law enforcement officer acted in good faith in arresting the prisoner and that the law enforcement officer is unable to bring the prisoner before a magistrate for arraignment. The sheriff, may, however, refuse to accept custody of a person arrested without a warrant in which event the arresting officer retains custody. In such circumstance the arresting officer may retain such custody at suitable place which would include a municipal jail or a lock-up at a police station.

FRANK J. KELLEY,
Attorney General.
