

tion and appointment of physicians to the medical staff shall be without discrimination solely on the basis of their license or registration or their professional education as doctors of medicine or doctors of osteopathy. . . ."

You mention in your letter the case of *Stribling v Jolley*, 241 MA 1123; 253 SW2d 519 (1952), in which the Court held that rules and regulations adopted by a county board of trustees which systematically exclude osteopathic doctors from the practice of medicine in a county hospital were discriminatory and void. This decision is compatible and consistent with 1913 PA 350, *supra*, in that it does not accord the board of trustees of a county hospital the opportunity to give preferential treatment to one class of physicians while discriminating against another class, mainly osteopaths.

Therefore, in response to your question, Hurley Hospital may not exclude doctors of osteopathy from treating patients in that hospital.

FRANK J. KELLEY,  
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**WARRANTS:** Written authorization by prosecuting attorney.

**PROSECUTING ATTORNEY:** Authorization for issuance of warrants.

**DISTRICT COURTS:** Issuance of warrants.

A district court judge may issue a summons or warrant for arrest without written authorization of a prosecuting attorney when the summons or warrant is based upon a complaint in the form of an appearance ticket.

Opinion No. 5033

July 9, 1976.

Mr. Donald A. Johnston, III  
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Prosecuting Attorney  
Office of the Prosecuting Attorney  
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You have requested my opinion whether warrants issued by district court judges pursuant to 1927 PA 175; MCLA 764.93; MSA 28.868(5), require the prior, written authorization of the county prosecuting attorney.

1927 PA 175, *supra*, provides:

If after the service of an appearance ticket and the filing of a complaint for the offense designated therein the defendant does not appear in the designated local criminal court at the time the appearance ticket is returnable, the court may issue a summons or a warrant of arrest based upon the complaint filed.

The general statutory authority for the issuing of warrants in criminal cases by district courts is found at 1927 PA 52; MCLA 600.8317; MSA 27A.8317 which states in pertinent part:

The district court has the same power to issue warrants . . . as the circuit court now has or may hereafter have.

The circuit court's statutory authority to issue warrants in criminal cases is found at 1931 PA 173; MCLA 764.1; MSA 28.860 which reads:

For the apprehension of persons charged with offenses, excepting such offenses as are cognizable by justices of the peace . . . the several circuit judges . . . shall have the power to issue processes to carry into effect the provisions of their chapter: Provided, however, That it shall not be lawful for any of the above named public officials to issue warrants in any criminal cases, except where warrants are requested by members of the department of public safety for traffic or motor vehicle violations until an order in writing allowing the same is filed with such public officials and signed by the prosecuting attorney for the county. . . .

The jurisdiction of justices of the peace covered offenses where punishment did not exceed \$100.00 fine and/or imprisonment for more than 3 months. In addition, criminal warrants could not be issued without a prosecutor's written order except when requested by a law enforcement officer for traffic or motor vehicle violations or road use violations enforceable by the state highway department, county road commission or the public service commission. 1952 PA 14; MCLA 774.1; MSA 28.1192 ad MCLA 744.4; MSA 28.1195.

The legislature has shown its inclination to modify by statutory exception, the general principle that all warrants must be accompanied by a prosecutor's written order. The Michigan Supreme Court in the case of *People v Holbrook*, 373 Mich 94, 128 NW2d 484 (1964), while upholding the necessity of complying with the requirement of obtaining the prosecuting attorney's authorization on a criminal warrant, recognized that certain exceptions do in fact exist both within the basic warrant statute and in other statutes. The exceptions as recognized by the *Holbrook* Court include cases involving traffic violations, cases where the complainant posts security for costs and cases where conservation officers prosecute individuals for violation of the conservation, game and fish laws.

The warrant authorized in the appearance ticket statute previously cited is another statutory exception to the general rule. Further, the procedure set forth in the statute does not seem unreasonable or inconsistent with prior law since an appearance ticket by definition is limited to a "violation or violations of state law or local ordinance for which the maximum permissible penalty does not exceed 90 days in jail and a fine of \$500." MCLA 764.9f; MSA 28.868(6).

It is, therefore, my opinion that a district court judge may issue a summons or warrant for arrest when such summons or warrant is based upon a complaint in the form of an appearance ticket properly filed with the court without an order in writing from the prosecuting attorney.

FRANK J. KELLEY,  
*Attorney General.*

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