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December 2 1953
Opinion No. 53-195

TO: The Honorable Jack Hunsaker
Justice of Peace
Mesa, Arizona

RE: Sections 66-186c, 66-186d, 66-170 and 66-151q, A.C.A. 1939, 1952 Supplement.

QUESTIONS: 1. Under what circumstances shall a person who has violated one or more provisions of the Uniform Act Regulating Traffic on Highways be taken immediately before a magistrate by the arresting officer, and when shall the arresting officer give a notice to appear to said violator?

2. What constitutes a "business or residence district" as those terms are used in Section 66-170, supra?

Section 66-186c, supra, provides:

"66-186c. WHEN PERSON ARRESTED MUST BE TAKEN IMMEDIATELY BEFORE A MAGISTRATE.-Whenever any person is arrested for any violation of this act punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense, provided a person taken before a justice of peace shall be taken before the nearest and most accessible with reference to the place where said arrest is made, in any of the following cases:

1. When a person arrested demands an immediate appearance before a magistrate;

2. When the person is arrested upon a charge of negligent homicide;

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3. When the person is arrested upon a charge of driving while under the influence of intoxicating liquor or narcotic drugs;

4. When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injuries, or damage to property;

5. In any other event when the person arrested refuses to give his written promise to appear in court as hereinafter provided."

The circumstances under which a peace officer may, without a warrant, arrest a person are set forth in Section 44-124, A. C. A. 1939, which reads in part as follows:

"A peace officer may, without a warrant, arrest a person:

(a) When the person to be arrested has committed a felony or misdemeanor in his presence. In the case of such arrest for a misdemeanor, the arrest shall be made immediately or on fresh pursuit."

The definition of the word "arrest" is found in Section 44-121, A.C.A. 1939, which reads as follows:

"44-121. DEFINITION OF ARREST.-Arrest is the taking of a person into custody in order that he may be forthcoming to answer for the commission of an offense."

Section 66-186, A.C.A. 1939, 1952 Supplement, makes every violation of the Uniform Act Regulating Traffic on Highways a misdemeanor unless the act or other law of the state declares such violation to be a felony. Therefore, a peace officer may, in the absence of a statute to the contrary, arrest any person violating a section of the act in his presence. The important thing for us to determine is what action the officer is authorized to take following the arrest.

The general law on the duty of an officer after an arrest is made without a warrant is found in Section 44-140, A.C.A. 1939:

"44-140. DUTY OF OFFICER AFTER ARREST WITHOUT WARRANT.-An officer who has arrested a person without a warrant shall without unnecessary delay take the person arrested before the nearest or most accessible magistrate in the county in which the arrest occurs, and shall make before the magistrate a complaint, which shall set forth the facts showing the offense for which the person was arrested."

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Section 66-186c, Supra, contains the procedure to be followed when arrest has been made in certain cases that pertain to arrest for violations of the Uniform Act Regulating Traffic on Highways. Under that section the arresting officer is authorized to take the person before a magistrate immediately <u>only</u> when said person demands an immediate appearance before a magistrate or is charged with negligent homicide, driving while under the influence of intoxicating liquor, failure to stop in the event of an accident causing death, personal injuries, or damage to property, or if said person refuses to sign a promise to appear in court. The meaning of the words in Section 66-186c, supra, which provide that

> "Whenever any person is arrested for any violation of this act punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense, * * *"

is qualified by the words

> "* * * <u>in any of the following cases</u>:"
> (Emphasis supplied)

so that a peace officer is not required to take a person immediately before a magistrate when the circumstances of the arrest and the nature of the charge do not fall into one of the five categories listed in Section 66-186c, supra.

Section 66-186d, A.C.A. 1939, 1952 Supplement, provides the procedure to be followed by the arresting officer in all cases of a violation of the act other than the five set forth above:

> "66-186d. WHEN PERSON ARRESTED TO BE GIVEN 5 DAYS' NOTICE TO APPEAR IN COURT.-(a) Whenever any person is arrested for any violation of this act punishable as a misdemeanor, <u>and such person is not immediately taken before a magistrate as hereinbefore required</u> the arresting officer shall prepare in quadruplicate written notice to appear in court containing the name and address of such person, the license number of his vehicle, if any, the offense charged, and the time and place when and where such person shall appear in court.
>
> (b) The time specified in said notice to appear must be at least 5 days after such arrest unless the person arrested shall demand an earlier hearing.

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(c) The place specified in said notice to appear must be before a magistrate within the city, town, precinct or county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense.

(d) The arrested person in order to secure release, as provided in this section, must give his written promise so to appear in court by signing at lease one (1) copy of the written notice prepared by the arresting officer. The officer shall deliver a copy of the notice to the person promising to appear. Thereupon said officer shall forthwith release the person arrested from custody.

(e) Any officer violating any of the provisions of this section shall be guilty of misconduct in office and shall be subject to removal from office." (Emphasis supplied)

Section 44-140, supra, is a general statute setting forth the procedure to be followed when a person has been arrested without a warrant, regardless of the nature of the crime involved, whereas, Sections 66-186c, and 66-186d, supra, are special statutes governing the procedure to be followed when a person has been arrested for a violation of the Uniform Act Regulating Traffic on Highways punishable as a misdemeanor.

"* * * A specific statute controls and is regarded as an exception to the terms of a general act, the legislature not being presumed to have intended a conflict. * * *"

In re GILBERT'S ESTATE, 73 Ariz. 261, 240 P. 2d 534. See also INDIAN FRED v STATE, 36 Ariz. 48, 282 Pac. 930; INDUSTRIAL COMMISSION v ARIZONA STATE HIGHWAY COMMISSION, 40 Ariz. 163, 10 Pac. 2d, 1046.

It is the conclusion of this office that a person arrested for a violation of the Uniform Act Regulating Traffic on Highways punishable as a misdemeanor, shall be taken immediately before a magistrate only when the circumstances of the arrest or the nature of the violation comes within one of the five cases listed in Section 66-186c, supra, and that in no other instance of a violation of the Act shall the person be required to accompany the arresting officer to a magistrate.

The words "business district" and "residence district" as they are used in Section 66-170a, A.C.A. 1939, 1952 Supplement, are specifically set forth in Section 66-151q, A.C.A. 1939, 1952 Supplement. That section provides:

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"66-15 lq. DEFINITIONS-DISTRICTS.-(a) Business District. The territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(b) Residence District. The territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business."

There is little we can add in the way of more adequately describing these terms, except to say that the speed limit as established by the municipality within a given area does not in any way alter its character either as a "business district" or "residence district", nor can the municipality alter the nature of a district merely by designating it something else, if, in fact, the area does not meet the definition as found in the above section of such designation.

Very truly yours

ROSS F. JONES
The Attorney General

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