

May 5, 1949.

COL. CHARLES H. SCHOEFFEL,
Superintendent, N. J. State Police,
Trenton, New Jersey.

FORMAL OPINION—1949. No. 40.

DEAR COLONEL SCHOEFFEL:

The letter of Lieutenant Campbell addressed to this office for Prosecutor Parker of Burlington County has been received.

You inquire as to what are the duties of law officers and State police, particularly in apprehending violators at late hours in the night, on holidays and weekends, when they are hesitant about disturbing Judge Rigg upon apprehension of such violators, and as to what the officer should do with such prisoners.

The officer arresting a person with process or arresting a person who has committed an offense in his view may take the prisoner before the judge of the county district court or before a municipal court in the municipality in which the offense was committed and if there is no municipal court existing in that county, to the next nearest court. Or, in the alternative, the sheriff and jailers of the county jail shall receive from the constable or other officer all persons apprehended by such officers for an offense against the State. A jailer or sheriff refusing to receive such offender shall be guilty of a misdemeanor and on conviction shall be fined at the discretion of the court. (R. S. 30:8-1.) This statute has been construed by our courts that this section requires a sheriff to receive in custody a person legally arrested whether with or without a warrant and the fact that the person arrested had not been committed was no defense to a prosecution of the sheriff for a misdemeanor under this section. *State vs. Kelly*, 84 N. J. L. 1; aff. 86 N. J. L. 704.

It is our opinion that an officer who arrests for an offense in his view or who arrests with bona fide warrant in a municipality in which there is no municipal court may take the prisoner to the next municipality having a court or deliver him to the county jail and the sheriff shall receive him and keep him as above set forth.

I suggest further that where a man has been arrested with or without warrant and is delivered to the county jail, that you give due diligence to the hearing of the person arrested.

Yours very truly,

THEODORE D. PARSONS,
Attorney General,

By: ROBERT PEACOCK,
Deputy Attorney General.