

# MAINE STATE LEGISLATURE

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yes ✓  
February 8, 1965

Colonel Robert Marx

Maine State Police

Wayne B. Hollingsworth, Assistant

Attorney General

We are in receipt of the memorandum from Trooper Jerald F. Boutilier of Troop B to Lieutenant Guy Savage, Commander of Troop B, in which Trooper Boutilier asks for an opinion as to the signing of complaints for misdemeanors not committed in the presence of the complaining officer.

Please be advised that it is our opinion that an officer can sign a complaint for a misdemeanor not committed in his presence as long as he has definite information or evidence which is more than mere hearsay to back him up. In other words, in the instant case, Trooper Boutilier went to the scene of the alleged motor vehicle accident and observed the damaged motor vehicle. With the physical evidence of the damage along with the statements by Sergeant Boothby, the Trooper had ample basis for signing a complaint. See Title 4, section 171, M.R.S.A. 1964, which states, inter alia:

"When complaint is made to the proper officer of the District Court charging a person with the commission of an offense, he shall carefully examine, on oath, the complainant, the witnesses by him produced and the circumstances and, when satisfied that the accused committed the offense, shall, on any day, Sundays and holidays not excepted, issue a warrant for his arrest, stating therein the substance of the charge."

At common law, and it is still our law today, an officer can arrest for a misdemeanor without a warrant only if it is committed in his presence. In order to get a warrant the Court must find that there are reasonable grounds to believe that the respondent has committed the misdemeanor as alleged. The reason behind interposing a magistrate between the officer and the potential respondent is so that an overzealous officer will not unjustly subject innocent persons to the humiliation of being arrested. If it were necessary for an officer to witness a misdemeanor before a complaint could be signed, it would render the whole system ineffectual because an officer can always arrest without any process if he witnessed a misdemeanor being committed. Mere

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hearsay, with not supporting evidence, is not sufficient basis on which to sign a complaint. In other words, if an officer received a telephone call complaining that X had killed a deer at a certain location, the officer would not at this point have sufficient evidence on which to base a complaint. If, however, he went to the scene of the alleged shooting and found such evidence as blood, hair, or drag marks, then he would have enough information on which to go before a magistrate and ask to sign a complaint. The magistrate would examine carefully the evidence offered and make a decision.

If the procedure was decided any other way, most of our cases would never be prosecuted for it is the exception rather than the rule that the officer actually views a misdemeanor being committed in his presence. In many instances it is only good police work that will uncover the person responsible for the commission of these crimes.

**Wayne B. Hollingsworth**  
**Assistant Attorney General**

**WBM/sll**