

TRIAL EVASION TRY IS CHARGED TO DA

By RAY LINCOLN

District Attorney Jim Garrison was charged today with malfeasance in office on grounds that he sought to block his federal court prosecution by having state charges filed against him.

The unexpected action came when Benjamin E. Smith, the special prosecutor named to handle the state bribery and gambling charges against Garrison, filed a bill of information with Criminal District Judge Malcolm V. O'Hara charging the DA with malfeasance.

The bill alleges that Garrison "did unlawfully and intentionally perform the duties of District Attorney in an unlawful manner" in that he had himself indicted on state charges "in order to unlawfully, and by guile, establish a defense to a pending federal charge."

THERE IS A "real danger," Smith said after announcing the move, that either acquittal or conviction on the state charges would protect Garrison from prosecution on similar federal charges of bribery, gambling and conspiracy. He said the constitutional ban on double jeopardy for the same charges may apply.

The parties to the state case—Smith and attorneys for Garrison and nine other defendants—went before O'Hara today to argue a change of venue motion sought by Garrison on grounds that the publicity given the case would keep the DA from getting a fair trial here.

Judge O'Hara took the change of venue motion under advisement and indicated he would rule on it probably by next Tuesday. But this aspect of the case faded into the background after Smith dropped his bombshell by filing the malfeasance charge.

THE JUDGE RECESSED the case until Monday, giving Garrison's attorneys until then to file a motion to quash the malfeasance charge. He said he would give Smith 24 hours after that to file an answer to such a motion.

Garrison's attorneys today took the position that Smith exceeded his power as ad hoc district attorney in filing the new charge. They argued that his appointment as ad hoc DA by Judge O'Hara authorized him only to prosecute the state bribery and gambling charges against Garrison, not file new charges.

Smith said he has the authority to prosecute any violation of state law growing out of the case.

THE CASE AGAINST Garrison, two New Orleans policemen and seven other men, arises out of a federal affidavit filed by U.S. Attorney Gerald Gall-

inghouse June 30. No federal grand jury indictment has yet followed the filing of the affidavit.

Garrison went before the Orleans Parish Grand Jury Nov. 15 and requested that they indict him on state charges. The jury did so.

Both the federal and state charges against Garrison accuse him of public bribery, gambling and conspiracy by accepting funds to protect illegal pinball activity. The seven others charged are pinball industry figures.

GARRISON'S OFFICE recused itself from prosecuting the case and Judge

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Malfeasance Is Charged

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O'Hara last week appointed Smith, normally a civil rights attorney, to handle the matter for the state.

Smith said today he conferred with Gallinghouse yesterday in an effort to get the federal government's evidence in the case and got a "bureaucratic runaround."

He said Gallinghouse cited federal regulations preventing disclosure of such evidence. Smith said he was told that in all likelihood he could not get such information.

Smith told the court he would take whatever legal action is necessary to obtain such evidence.

IN FILING THE malfeasance charge, Smith said he is requesting that Criminal District Judge Israel Augustine convene a special grand jury to investigate all charges against the 10 defendants.

F. Irvin Dymond, a defense attorney, said he was reserving the right to introduce in evidence an article in New Orleans Magazine by Rosemary James based on a telephone conversation with Pershing Gervais, a former Garrison aide on whose testimony the federal affidavit was based. Gervais' whereabouts are unknown to state officials at this time.

Arguing for the change of venue, Dymond said the New Orleans newspapers serialized "in storybook form" the

113-page federal affidavit. He said this was inherently prejudicial.

SMITH SAID the information was public record and was published in full without comment, which the papers have a right to do.

Judge O'Hara said the cases present a "unique situation." He said if anyone other than a well-known public official such as Garrison were involved, the change of venue motion would be invalid, but under the circumstances he would take it under close scrutiny.

Smith said he learned from Gallinghouse that the federal case will go to trial "very shortly" but could not find out just when.

THE TWO FORMER policemen charged along with Garrison are former Capt. Frederick A. Soule Sr., one-time commander of the vice squad, and former Sgt. Robert N. R. Frey, also a former vice squad commander.

Also charged are Louis M. Boasberg of the New Orleans Novelty Co.; John J. Elms and Lawrence J. Lagarde, partners in the TAC Amusement Co.; Harby S. Marks Jr., an employe of New Orleans Novelty; Robert Mims, a principal stockholder in REN Enterprises; John Aruns Callery, a lobbyist for the pinball industry; and John Elmo Pierce, owner of the Pierce Amusement Co.