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STATE OF KANSAS

*Office of the Attorney General*

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VERN MILLER  
Attorney General

June 4, 1974

Opinion No. 74- 173

Ms. Alice F. Crane  
Clerk, District Court  
Doniphan County  
Troy, Kansas 66087

, Dear Ms. Crane:

We have your letter of May 29, concerning opinion no. 73-286, of August 22, 1973, and enclosing a letter from Mr. O'Keefe.

He argues, as anticipated in the 1973 opinion, that K.S.A. 1972 Supp. 22-3609 provides an independent and, as it were, self-contained, statement of the right to appeal and the manner of doing so, and makes no reference to any requirement of a cost deposit.

K.S.A. 60-2101(a) constitutes a general grant of jurisdiction to the District Court to hear such appeals:

"A judgment rendered or final order made by a court . . . may be reversed, vacated or modified by the district court. If no other means for perfecting such an appeal is provided by law, it shall be sufficient for an aggrieved party to file a notice that he is appealing from such judgment . . . within thirty (30) days of its entry . . . The clerk shall thereupon docket the same as an action in the district court . . . A deposit as security for costs shall be required by the clerk of the district court as in the filing of an original action."  
[Emphasis supplied.]

K.S.A. 22-3609 provides another means for perfecting an appeal, and accordingly, the notice of appeal must be filed within ten days as prescribed therein, and not within thirty days, as set out in K.S.A. 60-2101. The requirement of a deposit of security

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for costs is of general application, and applies to all appeals to the District Court unless other provision is specifically made by law. K.S.A. 22-3609 makes no provision, specific or otherwise, regarding cost deposits, and accordingly, K.S.A. 60-2101 applies.

We share Mr. O'Keefe's concern that no person should be denied justice because of lack of funds. Certainly, if an indigent person were to be denied an appeal to the District Court because of lack of funds alone, such denial would constitute an individual discrimination forbidden by the Fourteenth Amendment to the United States Constitution. However, K.S.A. 60-2101 states that deposit as security for costs shall be required "as in the filing of an original action." K.S.A. 60-2001(b) concerning security for costs, states thus:

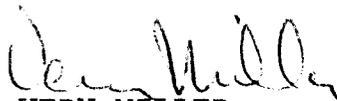
"In any case where a plaintiff by reason of poverty is unable to make the deposit to secure costs an affidavit so stating may be filed and no deposit will be required."

Thus, no person seeking to appeal to the District Court may be denied an appeal solely because he is without funds to make the deposit otherwise required.

In all candor, Mr. O'Keefe is not alone in his disagreement with the opinion in question. With a copy of this letter to him, I am enclosing a copy of a decision of the Reno County District Court, rendered January 25, 1974, in the case of City of Hutchinson v. Getter, no. 20848. However, again, the court in its opinion makes no reference to K.S.A. 60-2001, which specifically states that an affidavit of poverty may be accepted in lieu of the deposit where the appellant is unable to make the deposit to secure costs. This provision provides adequate protection, and has since its enactment in 1963, for indigent defendants who would otherwise be denied an appeal to the District Court solely because of lack of funds.

We remain persuaded that the 1973 opinion on this question is correct.

Yours very truly,

  
VERN MILLER  
Attorney General

VM:JRM:jsm  
cc: Maurice P. O'Keefe, Jr.  
Enc.