



STATE OF KANSAS

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CURT T. SCHNEIDER
Attorney General

March 7, 1975

Opinion No. 75- 102

Colonel Allen Rush
Superintendent
Kansas Highway Patrol
State Office Building
Topeka, Kansas 66612

Dear Colonel Rush:

K.S.A. 1974 Supp. 8-2107 provides that under certain circumstances, an officer who has halted any person for any violation specified in subsection (b) "may require the person so halted to give bond in an amount fixed by the section

"which bond shall be subject to forfeiture if said person halted does not appear at the court and at the time specified in the written notice provided for in section 8-2106. Such bond may be a cash bond or a guaranteed arrest bond certificate issued by either (1) a surety company authorized to transact such business in this state or (2) an automobile club authorized to transact business in this state by the commissioner of insurance"

You inquire whether a bank check constitutes a "cash bond" which may be accepted under this provision.

There are diverse opinions whether a check may be deemed to constitute "cash." The decision ordinarily is based upon the circumstances and context in which the question is raised. At Wigmore on Evidence § 2470 (3d ed. 1940), the writer states thus:

"[T]he words of a document are never anything but indices to extrinsic things, and that therefore all the circumstances must be

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considered which go to make clear the sense of the words, -- that is, their associations with things."

In Stewart v. Selder, 473 S.W.2d 3 (Tex.Civ.App. 1971), the court stated:

"The word 'cash' in its strict sense refers to coins and paper money. It is also used, less strictly, to mean not only money, but also checks and demand deposits in banks and savings institutions."

In another case, Buckeye Development Corp. v. Brown and Shilling, Inc., 220 A2d 922, 925, 243 Md. 224 (1966), the court stated thus:

"There are some areas in which there is little room for the exercise of discretion. When the published terms of [execution] sale provide, as in the case at bar, for a sale 'to the highest bidder for cash', the sheriff may not vary the terms of sale by accepting anything else. The terms 'cash' as used here, exclude checks, drafts and negotiable instruments in any other form. It means United States currency. Certified checks, bank drafts and cashier checks may, in appropriate circumstances, constitute an exception when drawn upon or issued by banks the existence and solvency of which are well known to the sheriff. (Citing cases)"

The purpose of the "cash bond" required by K.S.A. 1974 Supp. 8-2107 is to provide security for the appearance of the person halted for violation of the traffic laws of the state. The term "cash bond" must be construed accordingly. An ordinary bank check provides no security whatever. A check is but an instrument representing a promise to pay a sum certain in money, drawn on a bank and payable on demand. K.S.A. 84-3-104(2)(b). Satisfaction of the

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obligation depends upon the maker's failure to take any action to countermand the order of payment represented by the check. A check, in and of itself, provides no security that the maker will not take such steps, and thus leave the state totally unsecured against his nonappearance.

We cannot but conclude that an ordinary bank check does not constitute a "cash bond" within the meaning of K.S.A. 1974 Supp. 8-2107.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj