



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

May 12, 1975

Opinion No. 75-217

Mr. Richard E. Jones
Assistant City Attorney
City of Topeka
Municipal Building
215 East 7th Street
Topeka, Kansas 66603

Dear Mr. Jones:

In your recent letter to this office, you queried whether the Municipal Court Judge of the City of Topeka is a "magistrate" as that term is defined in K.S.A. 22-2202(12). After having reviewed the provisions of this and other statutes which bear upon your inquiry, it is our opinion that the question must be answered in the negative.

K.S.A. 22-2202, a definitional provision of the Kansas Criminal Code, defines the term "magistrate" as follows in section 12:

"Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a crime and includes:

- (a) x x x
- (b) x x x
- (c) Judges of courts exercising limited jurisdiction under the laws of the state of Kansas."

Informatively, K.S.A. 22-2601, in delineating the jurisdictional capacities of the criminal courts of this state, defines the phrase "courts of limited jurisdiction" as follows:

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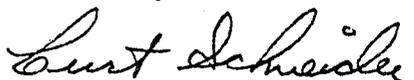
"Courts of limited jurisdiction shall include all courts of the state except the supreme court, district courts, . . . , municipal or police courts . . ."

Thus, this statute expressly excludes municipal courts from the statutory class of "courts of limited jurisdiction" and seems determinative of the question posed herein concerning the interpretation of §22-2202(12). This same dichotomy is preserved in yet another provision of the Code, K.S.A. 22-3609(1), which provides for appeals to district court "from any judgment of a court of limited jurisdiction or a municipal or police court . . ."

It seems apparent that this precise phraseology also evinced a legislative intent to separate municipal courts from those of limited jurisdiction, and it affirms the conclusion drawn from the plain wording of K.S.A. 22-2601.

Therefore, it is our opinion that the Municipal Court Judge of the City of Topeka is not a "magistrate" as that term is defined in §22-2202(12) of the Kansas Criminal Code.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

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