



STATE OF KANSAS

## Office of the Attorney General

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

**Curt T. Schneider**  
Attorney General

October 17, 1975

ATTORNEY GENERAL OPINION NO. 75- 393

Donald L. Beck  
City Attorney  
City of Kiowa  
Kiowa, Kansas

Re: Counties and County Officers -- County Attorney --  
Duties

Synopsis: The county attorney has no authority to prosecute an appeal in district court from a municipal court conviction for violation of a traffic ordinance. Such authority resides solely with the city attorney of the affected municipality.

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Dear Mr. Beck:

You inquire whether the county attorney or the city attorney has the responsibility of prosecution in the district court after the defendant has perfected an appeal under K.S.A. 22-3609-3610 from a municipal court conviction for violation of a traffic ordinance.

We believe that the provisions of K.S.A. 19-702 are dispositive of your inquiry. This statute prescribes the duties of a county attorney in the following terms:

"It shall be the duty of the county attorney to appear in the several courts of their respective counties and prosecute or defend on behalf of the people all suits, applications or motions, civil or criminal, arising under the laws of this state, in which the state or their county is a party or interested."

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From an analysis of the statute, it is clear that the county attorney has jurisdiction to proceed only where the state or the county is an interested party in particular litigation. Nowhere does the statute confer upon him the authority to maintain an action on behalf of a municipality.

Although an appeal from a judgment of conviction in municipal court lies in the district court, a court of general jurisdiction, the trial de novo authorized by statute remains entirely a municipal court action for the enforcement of the ordinances of the municipal sovereignty. See City of Fort Scott v. Arbuckle, 165 Kan. 374, 196 P.2d 217 (1948); In re Sanford, 117 Kan. 750, 232 P. 1053 (1925). It is the nature of the action that is determinative of prosecutorial responsibility and accordingly, it is the city attorney who must maintain the action in district court in enforcement of the ordinances of the municipality.

This conclusion draws direct support from the decision in State ex rel. Burton v. VanDyne, 159 Kan. 378, 384, 155 P.2d 458, 462 (1945) wherein the court recognized the general rule "that a city has exclusive power to enforce its ordinances" in holding that a county attorney possessed no authority to maintain an action charging a violation of a municipal zoning ordinance. The court analyzed the terms of former G.S. 1935, 19-702, and observed as follows:

"This section contains no provision which confers on county attorneys the power to bring actions in the name of the state to enforce city ordinances. It refers to laws of the state and to actions in which the state or their county is a party." 159 Kan. at 384, 155 P.2d at 462-463.

Therefore, after consideration of the question posed by your letter, it is our opinion that the city attorney is the official responsible for conducting the appellate proceedings in the district court for violation of the traffic ordinances of a municipality.

Very truly yours,

  
CURT T. SCHNEIDER  
Attorney General

CTS:RMT:en