



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

October 23, 1975

ATTORNEY GENERAL OPINION NO. 75- 403

John P. Gerstle
Assistant City Attorney
City of Lenexa
Lenexa, Kansas 66215

Re: Crimes and Punishments--Kansas Criminal Code--
Sentencing--Municipal Court--Jurisdiction

Synopsis: The application for, or the acceptance of probation of a suspended sentence from a municipal court does not bar a subsequent appeal by the accused to the District Court under the authority of K.S.A. 1974 Supp. 12-4601.

* * *

Dear Mr. Gerstle:

You have requested an opinion from this office concerning whether the application for, or the acceptance of probation of a suspended sentence from a Municipal Court shall bar a subsequent appeal to the District Court.

The pertinent statute, K.S.A. 21-4603(5), provides:

"(5) An application for or acceptance of probation or suspended sentence shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from his conviction, as provided by law, without regard to whether he has applied for probation or suspended sentence."

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This, as well as all other provisions of the Kansas Criminal Code, K.S.A. 21-3101 et seq., are applicable only in those circumstances encompassed by the scope provisions of K.S.A. 21-3102.

"(1) No conduct constitutes a crime against the state of Kansas unless it is made criminal in this code or in another statute of this state, but where a crime is denounced by any statute of this state, but not defined, the definition of such crime at common law shall be applied.

(2) Unless expressly stated otherwise, or the context otherwise requires, the provisions of this code apply to crimes created by statute other than in this code."

The clear implication of subsection (2) is that the provisions of Articles 31 through 46 of Chapter 21 of the Kansas Criminal Code apply only in those instances where the crime is created by a Kansas statute. The use of the word "statute" is significant in that it clearly distinguishes this type of criminal offense from those acts merely prohibited by ordinance. Furthermore, additional guidance as to the scope of K.S.A. 21-4603(5) is found at K.S.A. 21-4602(1). For purposes of Article 46 of Chapter 21, the term "court" is defined to mean "... any court having jurisdiction and power to sentence offenders for violations of the laws of this state." However, the jurisdiction of the municipal courts of each city is defined by K.S.A. 12-4104 as limited to "... hear and determine cases involving violations of the ordinances of that city." In our view, this latter statutory provision read in conjunction with the other statutes establishes that the provisions of K.S.A. 21-4603(5) do not apply to municipal court proceedings. In fact, the very definition of the municipal courts' jurisdiction clearly excludes them from the operation of the statutes contained in Kansas Criminal Code, and in particular, K.S.A. 21-4603(5).

Although K.S.A. 21-4603(5) apparently does not secure the right of appeal to the district court for those individuals accused in a municipal court proceeding, examination of Kansas code of procedure for municipal courts, K.S.A. 12-4101 et seq. reveals K.S.A. 12-4601 which provides:

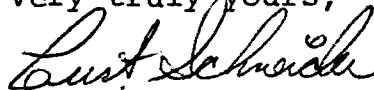
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"An appeal may be taken to the district court in the county in which said municipal court is located:
(a) By the accused person in all cases; and
(b) By the city upon questions of law.
The appeal shall stay all further proceedings upon the judgment appealed from."

The use of the phrase "in all cases" is significant in that it secures the right of appeal to the district court irrespective of the disposition made of the matter at the municipal court proceeding.

Therefore, in light of the foregoing discussion, it is the opinion of this office that the application for, or the acceptance of probation of a suspended sentence from a municipal court does not bar a subsequent appeal by the accused to the District Court under the authority of K.S.A. 1974 Supp. 12-4601.

Very truly yours,



CURT T. SCHNEIDER
ATTORNEY GENERAL

CTS:HTW:bv