



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

June 11, 1976

ATTORNEY GENERAL OPINION NO. 76- 174

Mr. Wilbur S. Stakes, Jr.
City Attorney
City of Lansing
City Hall
Lansing, Kansas 66043

RE: Municipal Courts -- Disposition and Sentences

SYNOPSIS: A municipal court is vested with broad discretion to prescribe conditions of release after imposition of a sentence consisting of a fine, which conditions might well include the rendition of prescribed services in the public interest for the city.

* * *

Dear Mr. Stakes:

You inquire concerning disposition and sentencing permitted under the Kansas Code of Procedure for Municipal Courts.

You advise that a number of defendants who are convicted in the Municipal Court of the City of Lansing do not have funds available at the time of sentencing for purposes of paying a fine imposed by the court. You inquire whether an offender who is convicted in the municipal court may be ordered to perform assigned tasks for the City of Lansing in lieu of payment of a fine.

At the outset, it is important to mention two cases. In *Williams v. Illinois*, 399 U.S. 235, 26 L.Ed.2d 586, 90 S.Ct. 2018 (1970), the Court considered a case in which an indigent defendant had been sentenced to the maximum sentence of one year's imprisonment and a \$500 fine, the judgment of conviction providing, as

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permitted by state statute, that if the defendant were in default of the monetary payment at the expiration of his term of imprisonment, he could remain in jail to "work off" the fine at the statutory rate of \$5 per day. Concluding that "when the aggregate imprisonment exceeds the maximum period fixed by statute and results directly from an involuntary nonpayment of a fine or court costs we are confronted with an impermissible discrimination that rests on ability to pay," the Court held that the defendant could not be imprisoned solely because of indigency.

In *Tate v. Short*, 401 U.S. 395, 28 L.Ed.2d 130, 91 S.Ct. 668 (1971), the defendant had been convicted of nine traffic offenses, punishable by fines only, and was fined a total of \$425. Unable to pay the fine, he was ordered to prison for 85 days, being credited \$5 per day for each day toward payment of the fine. Following *Williams*, the Court again stated thus:

"Since Texas has legislated a 'fines only' policy for traffic offenses, that statutory ceiling cannot, consistently with the Equal Protection Clause, limit the punishment to payment of the fine if one is able to pay it, yet convert the fine into a prison term for an indigent defendant without the means to pay his fine." 401 U.S. at 399.

K.S.A. 12-4509 specifies the possible dispositions available to the municipal court. It states thus:

"Whenever an accused person is found guilty of the violation of an ordinance, the municipal judge may:

(a) Release the accused person without imposition of sentence;

(b) Release the accused person on probation after the imposition of sentence, without imprisonment or the payment of a fine or a portion thereof, subject to conditions imposed by the court; or

(c) Impose such sentence of fine, imprisonment, or both, as may be authorized for the ordinance violation."

Under (b), after imposition of sentence such a fine, the court may order the accused person released on probation, subject to conditions imposed by the court. The code does not specify the conditions which may be imposed, and accordingly, the municipal court is granted broad discretion in the formulation of conditions of release after imposition of sentence. The court appears to be vested with broad

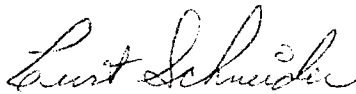
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discretion to prescribe conditions of release after imposition of a sentence consisting of a fine, which conditions might well include the rendition of prescribed services in the public interest for the City of Lansing.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:en