



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 1, 1976

ATTORNEY GENERAL OPINION NO. 76-199

Mr. Nick A. Tomasic
District Attorney
Wyandotte County Courthouse
Kansas City, Kansas 66101

Re: Courts--Process--Service

Synopsis: A unified district court may establish a court-administered process service office, and employ therein persons presently employed by the marshal of a magistrate court in said county, for the service of process under the code of civil procedure, as of January 10, 1977. However, executions against judgment debtors in civil actions, arrest and search warrants and other criminal process, and process in actions under the code of civil procedure for limited actions are required by express statutory provisions to be executed by and under the authority of the sheriff.

* * *

Dear Mr. Tomasic:

On behalf of Mr. Richard Shannon, Court Administrator for the Twenty-Ninth Judicial District, you inquire concerning the establishment of a central office for the service of process under the direct control and supervision of the Court Administrator and of the court itself.

The question is prompted by enactment of 1976 House Bill No. 2729, which, *inter alia*, repealed K.S.A. 20-2527. That section provided for the office of the marshal of the Wyandotte County Magistrate Court, who has historically served the process of that court.

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The District Court wishes to create a central office for the service of process of the unified district court which is created as of January 10, 1977, and to employ therein personnel presently serving in the office of the marshal. As you point out, section 33 of House Bill No. 2729 authorizes the administrative judge of each judicial district, with the approval of a majority of the other district judges, to appoint nonjudicial personnel:

"From and after January 10, 1977, the administrative judge of each judicial district, with the approval of a majority of the other district judges of such judicial district, shall appoint such bailiffs, court reporters, secretaries, parole and probation officers and other clerical and nonjudicial personnel as are necessary to perform the judicial and administrative functions of the district court. Persons appointed pursuant to this section shall have qualifications as may be prescribed by law or rule of the supreme court. . . . Such persons shall perform such duties and function as are prescribed by law or are assigned by the administrative judge, subject to rule of the supreme court."

Under section 34, "due consideration" shall be given in making such appointments to personnel presently serving in the district court or in any of the courts of limited jurisdiction.

You inquire, first, whether the court may create court-administered process office, and employ therein persons presently serving in the office of the Marshal of the Magistrate Court. "[T]he court has inherent power to issue any writ that may be necessary to give effect to its authority or jurisdiction." 62 Am.Jur.2d, *Process*, § 5, p. 788. The unified court is a court of general jurisdiction. Such a court has inherent power to provide for the issuance of process, that being a power which is central to the administration of justice, the effectuation of its orders and the exercise of its jurisdiction. It is my opinion that the district court has inherent power to provide for a centralized office for the service of process issued by the court or its clerk, said office to be under the direction and supervision of the judges of the court and its judicial or court administrator, and to give due consideration for employment in such office to those persons presently employed in the office of the Marshal of the Magistrate Court.

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K.S.A. 60-303 states in pertinent part thus:

"Service of all process shall be made by a sheriff within his county, by his deputy or by some person specially appointed by the judge for that purpose, or in his absence, the clerk"

The statute expressly recognized and provides for the exercise of this inherent power by the court. Subpoenas may also be served by persons other than the sheriff. K.S.A. 1975 Supp. 60-245(c). Orders of executions may be issued and directed to the "appropriate officers of the counties where they are to be levied." K.S.A. 60-2401(b). A person appointed by the court to execute an order issued by it is, obviously, an "appropriate officer," and thus, a member of the staff of a process office created by court order, and appointed thereto by the court, is entitled, both by statute and in the exercise of the inherent power of the court, to serve such execution orders.

K.S.A. 1975 Supp. 60-2419 refers expressly to the sheriff in two instances. First, it provides for a proceeding for examination of a creditor whenever an execution against a judgment debtor which is issued to the sheriff is returned unsatisfied in whole or in part. Secondly, it provides that when examination discloses the existence of nonexempt property, the court shall order the debtor to deliver it to the sheriff. As indicated above, under K.S.A. 60-2401, any general or special execution may be directed to the "appropriate officers." Historically, such orders have customarily been directed to the respective sheriffs. In view of the lack of precise statutory provision, I would suggest that unless and until further legislation is enacted, that executions should be directed to the sheriff, rather than to the process office of the court, to forestall litigation concerning formal and procedural defects in executions which might affect the rights of various creditors.

You inquire further whether the authority of the court-administered process office may extend to criminal matters as well as civil process. K.S.A. 22-2305 states thus in pertinent part:

"(1) The warrant shall be executed by a law enforcement officer. The summons

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may be served by any person authorized to serve a summons in a civil action."

A "law enforcement officer" is defined thus by K.S.A. 22-2202:

"(11) 'Law enforcement officer' means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof."

An officer of the court process agency is not, by virtue of appointment to that position, a "law enforcement officer," as defined above, and is thus not authorized to serve an arrest warrant, although such an officer is empowered to serve a summons under the Kansas code of criminal procedure.

Under K.S.A. 22-2505, a search warrant shall be directed for execution to "law enforcement officers." Similarly, under K.S.A. 22-3427, the execution of a sentence of confinement is entrusted to the "sheriff of the county or marshal of the court." In my judgment, the execution of sentences of confinement imposed in criminal matters rests by virtue of that position with the sheriff, and may not be transferred and assigned by the court to its own process agency by adoption of a court rule.

Concerning process issued under the code of civil procedure for limited actions, K.S.A. 1975 Supp. 61-1803 is amended as of January 10, 1977, by section 7 of House Bill No. 3187 to provide thus:

"Except as provided in K.S.A. 1975 Supp. 61-1804, all civil process issued in actions pursuant to this chapter shall be delivered to the sheriff of the appropriate county for service. Such process shall be executed and returned as provided by law."

K.S.A. 1975 Supp. 61-1804 is not materially amended by the bill.

It may be argued, of course, that the inherent power of the court to provide for the issuance of process remains intact despite these explicit statutory provisions. However, despite the broad inherent

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powers of the court, the legislature has also undertaken to regulate the issuance of process in actions under the code of civil procedure for limited actions, effective January 10, 1977, and to provide thereby expressly for the service of process by the sheriff. Although it is surely within the inherent power of the court to provide for the issuance of process through its own agencies in exigent circumstances when necessary to effectuate its jurisdiction, I cannot properly advise the court broadly and entirely to disregard K.S.A. 1975 Supp. 61-1803, by providing for the service of process generally by persons other than the sheriff and his authorized deputies. K.S.A. 1975 Supp. 61-1804, as amended, authorizes the appointment of persons other than the sheriff to serve and execute only in particularized circumstances which must be found to exist in each particular case in which such appointment is made.

To recapitulate, it is my opinion that as of January 10, 1977, the unified district court may establish a court-administered process service office, and employ therein persons presently employed in the office of the marshal of the magistrate court. It is further my judgment that such a process service office might serve and execute all process within the scope of K.S.A. 60-303. However, the existing express statutory provisions regarding execution against judgment debtors, service of arrest and search warrants and other criminal process, and service in actions arising under the code of civil procedure for limited actions require, in my judgment, that service and execution thereof be made by the sheriff or person authorized by him for that purpose.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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