



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 27, 1976

ATTORNEY GENERAL OPINION NO. 76-374

Mr. Calvin A. Strowig
Chairman
Governmental Ethics Commission
109 West Ninth
Topeka, Kansas 66612

Re: Campaign Finance Act--Crimes--Venue

Synopsis: Venue for the prosecution of the offense of intentional failure to file any report required by the Campaign Finance Act, K.S.A. 25-4101 *et seq.*, to be filed with the Commission or with the Secretary of State lies only in Shawnee County, and accordingly, the district attorney of Shawnee County is the appropriate district attorney to be notified of any such violations pursuant to K.S.A. 1975 Supp. 25-4125.

* * *

Dear Mr. Strowig:

K.S.A. 25-4125 states thus:

"After a hearing on an alleged violation of this act the commission shall state its findings of fact. If the commission finds that the respondent has not violated any provisions of this act, it shall order the action dismissed, and shall notify the respondent and complainant thereof. If the commission finds that the respondent

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has violated any provisions of this act, it shall state its findings of fact and submit a report thereon to the attorney general and to the county or district attorney of the appropriate county."

Violations of the Campaign Finance Act, K.S.A. 1975 Supp. 25-4101 *et seq.*, generally require intentionality as an element of the offense. In the instance, for example, of a possible violation involving failure to file a report with the Secretary of State or with the Commission as required by the act, you inquire whether the notice required by K.S.A. 25-4125 should be forwarded to the district attorney of Shawnee County, where the report is to be filed, or to the county or district attorney of the county where the respondent resides.

K.S.A. 1975 Supp. 25-4128 provides in pertinent part thus:

"Failure to file a campaign finance report is (a) the intentional failure, of any person required to make any report, amended report or statement by this act, to file the same with the secretary of state at the time specified in this act. . . ."

K.S.A. 22-2602 states thus:

"Except as otherwise provided by law, the prosecution shall be in the county where the crime was committed."

The notes of the Judicial Council indicate that the language of K.S.A. 22-2602 was taken in part from Rule 18 of the Federal Rules of Criminal Procedure. The first sentence of that rule states thus:

"Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed."

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The question is not strictly a procedural one, but also a constitutional question, for section 10 of the Kansas Bill of Rights states in pertinent part thus:

"In all prosecutions, the accused shall be allowed . . . a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed."

The question which is presented is where the offense of intentional failure to file was committed.

In *Johnston v. United States*, 351 U.S. 215, 100 L.ed. 1097, 76 S. Ct. 739 (1956), the question was presented of proper venue for the prosecution of three individuals, all conscientious objectors, for failure to report for the performance of alternative civilian employment as directed by their respective selective service boards. The precise question presented by two of the petitioners was quoted thus by the court from the petition for certiorari:

"Where each petitioner resided in the Western District of Pennsylvania, the Selective Service local board of each was located in the Western District of Pennsylvania, the orders to perform work were issued in the Western District of Pennsylvania and each petitioner did not go beyond his local board in the Western District of Pennsylvania and at all times refused to leave the Western District of Pennsylvania and did not proceed to the Eastern District of Pennsylvania, where the offenses committed in the Western District of Pennsylvania and not in the Eastern District and, therefore, does it violate rights guaranteed by the Sixth Amendment to the Constitution to indict and prosecute each petitioner in the Eastern District of Pennsylvania?"

The Court resolved the question against the petitioners:

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"Our analysis of the law and the facts in these cases convinces us that the venue of these violations of the orders lies in the district where the civilian work was to be performed, that is, for Patteson in Kansas, and the Eastern District of Pennsylvania for Johnston and Sokol.

We are led to this conclusion by the general rule that where the crime charged is a failure to do a legally required act, the place fixed for its performance fixes the situs of the crime." 100 L.ed at 1101-1102. [Footnote omitted.]

In *U.S. v. Lombardo*, 241 U.S. 73, 60 L.ed. 897, 36 S. Ct. 508 (1916), the Court held that where a place is explicitly designated where a paper must be filed, a prosecution for failure to file lies only at that place. See also, *Travis v. U.S.*, 364 U.S. 631, 5 L.Ed.2d 340, 81 S. Ct. 358 (1961).

In the instance of an intentional failure to file a report with the Secretary of State as required by the Kansas Campaign Finance Act, mere intention not to file is not, of course, punishable. It is the execution of that intention which constitutes a violation of the act. The filing is required to be made in Shawnee County. The failure to file occurs where that failure occurred, at the situs of the filing requirement itself, and not elsewhere.

Inasmuch as the pertinent language of K.S.A. 22-2602 was apparently adopted from Rule 18, F.R.Cr.P., the construction given that rule by the federal courts is entitled to great weight. *Small v. Small*, 195 Kan. 531 at 538, 407 P.2d 491 (1965). Similarly, the analysis of like offenses by the federal courts in determining venue under that rule should be given similar deference. Indeed, there appears to be little or no authority that venue for a prosecution for failure to file a document as required by law will lie in any jurisdiction other than where the filing is required to be accomplished.

Accordingly, it is my opinion that the district attorney of Shawnee County is the appropriate officer to be notified pursuant to K.S.A. 25-4125 of any intentional failure to file, or intentional false or fraudulent filing of, any report which is required by law to be filed with the Secretary of State or the Commission.

Yours very truly,



CURT T. SCHNEIDER
Attorney General