



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

March 29, 1977

ATTORNEY GENERAL OPINION NO. 77-107

Mr. George E. Grist, P.A.
City Attorney
Suite 408-Bitting Building
107 North Market
Wichita, Kansas 67202

Re: Cities and Municipalities--Commencement of
Prosecution and Arrest--Complainant

Synopsis: Any citizen alleging the commission of a crime
may file a complaint pursuant to K.S.A. 12-4202.

* * *

Dear Mr. Grist:

You inquire whether under K.S.A. 12-4202 a complainant may be: (1) a law enforcement officer having personal knowledge of the facts; (2) a private citizen who has been a victim of a crime or; (3) anyone having hearsay knowledge in either one of the above categories.

K.S.A. 12-4202 entitled complaint; requirement; for, provides:

"A complaint shall be in writing and shall be signed by the complainant. More than one violation may be charged in the same complaint."

K.S.A. 12-4113 defines complaint as "a written statement of the essential facts constituting a violation of a city ordinance." The term "complainant," though, is not defined within the Kansas Code of Procedure for Municipal Courts. Such being the case, reference to the Kansas Code of Criminal Procedure and United States Supreme Court decisions is instructive.

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Both the Kansas Code of Procedure for Municipal Courts and the Kansas Code of Criminal Procedure state that the prosecution for the violation of a law shall be commenced by the filing of a complaint with the appropriate court. K.S.A. 12-4201 and K.S.A. 1976 Supp. 22-2301. In "Notes on the Code of Criminal Procedure," 39 J.B.A.K. 97, 98 (1970), Richard H. Seaton and Paul E. Wilson conclude that K.S.A. 22-2301 implies that any citizen alleging the commission of a crime may file a complaint. Also, K.S.A. 1976 Supp. 22-3201 states that "[A] complaint shall be signed by some person with knowledge of the facts."

In Libby v. Schmidt, 179 K. 683, 298 P.2d 298 (1956), the Kansas Supreme Court stated that, ". . . a complaint may be signed by anyone who is competent to testify to the facts stated therein. It need not be signed by an officer." (Emphasis supplied by the court). This case was decided before the enactment of the new Code of Criminal Procedure, but there is no evidence of any legislative intent either express or implied, to overrule the holding of the court in that case in the new code. In fact, the language of K.S.A. 1976 Supp. 22-3201 reaffirms the court's holding in Libby v. Schmidt, supra.

The United States Supreme Court in Giordenello v. United States, 357 U.S. 480 (1958) and in Aguilar v. Texas, 378 U.S. 108 (1964) held that a magistrate has the duty to make a neutral judgment that resort to further criminal process is justified and the complaint must provide a foundation for that judgment. It must provide the affiant's answer to the magistrate's hypothetical question, "What makes you think that the defendant committed the offense charged?" Also, the magistrate can require the affiant to indicate some basis for his allegations. There must be enough information presented to enable the magistrate to make the judgment that the charges are not capricious and are sufficiently supported to justify bringing into play the further steps of the criminal process. Jaken v. United States, 381 U.S. 214 (1965).

It is our opinion, then, that any citizen alleging a commission of a crime may file a complaint under K.S.A. 12-4202. Note should be made though, that whether the complaint establishes probable cause to proceed in the criminal process involves the credibility and weight of the evidence. A complaint may be premised entirely upon hearsay, but in such a case, an evaluation

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of the affiant's sources of information to determine if they
are credible will be warranted.

Very truly yours,


CURT T. SCHNEIDER
Attorney General

CTS:DLW:BAR:ksn