



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 15, 1978

ATTORNEY GENERAL OPINION NO. 78- 70

The Honorable Robert Henry
State Representative
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: Alcohol--Emergency Detention--Suitable Places

Synopsis: When a law enforcement officer detains a person under emergency circumstances under K.S.A. 1977 Supp. 65-4027(A), the officer may detain such person in a jail only when the individual has not been accepted by a public treatment facility within the territorial limits of the officer's jurisdiction, and there is no private treatment facility, other emergency medical service or other like facility able and willing to accept such person for care.

* * *

Dear Representative Henry:

As you advise, the 1977 legislature repealed K.S.A. 21-4109, providing for the offense of public intoxication, see ch. 115, L. 1977, and forbade any city or county to enact a local law, ordinance, resolution or regulation rendering public intoxication by alcohol in and of itself an offense, violation or otherwise the subject of criminal penalties. Ch. 211, L. 1977. You advise that as a result of these enactments, local police departments are uncertain what action they may take regarding a person who is found intoxicated by alcohol in a public place and who may be a danger to himself, herself or to others. You indicate that it is the understanding of your local police department that a person who is taken into custody in such circumstances may not be held until he or she becomes sober because they may not book that person for a violation. At the same time, the local hospital

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and local private alcoholic treatment center will not accept the individual unless there is some sign of illness or unless he or she has the means to pay for treatment. If the individual has a known home often the family declines to accept the individual's return while still intoxicated, and you indicate, there is no public alcoholic treatment center in the area.

K.S.A. 1977 Supp. 65-4027(A) provides in pertinent part thus:

"Any law enforcement officer who has reasonable belief upon observation, that any person is intoxicated or incapacitated by alcohol and because of his or her condition is likely to do physical injury to himself or herself or others if allowed to remain at liberty may take such person into custody without a warrant."

If the individual is taken into custody at a time when the district court is not available, the officer shall transport the individual to a public treatment facility, which may accept the individual after examination upon the required finding by the head thereof or his or her designee. The section continues thus:

". . . if there is no public treatment facility available to receive such person within the territorial limits of the law enforcement officer's jurisdiction, the law enforcement officer may detain such person in a private treatment facility or other suitable emergency medical service or other suitable place until the close of the first day such district court is available." [Emphasis supplied.]

Thus, in the exercise of the emergency detention authority of this section, a law enforcement officer may detain a person, lacking a public treatment facility willing to receive such person within the territorial jurisdiction of the officer, in 1) a private treatment facility, 2) other suitable emergency medical service, or 3) "any other suitable place." The question is whether, under the circumstances described above, a jail may in some instances be such a "suitable place." Guidance in the construction of that

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phrase may be taken from the detention authority of the district courts under ex parte protective orders issued pursuant to K.S.A. 1977 Supp. 65-4031, which states in pertinent part thus:

"The order of protective custody shall authorize a health officer, physician, law enforcement officer or other person to take the proposed patient into custody and to transport and place him or her in a designated public or private treatment facility or other suitable place willing to receive such patient. The order of protective custody shall designate the place of detention but no person shall be detained in protective custody in a nonmedical facility used for the detention of persons charged with or convicted of a crime unless other facilities are not available." [Emphasis supplied.]

Thus, a jail may be a "suitable place" for the detention of such persons under ex parte protective orders when and only when other facilities are not available. Equally, in my judgment, a jail may be a "suitable place" for emergency detention by law enforcement officers under K.S.A. 1977 Supp. 65-4027, but only when, again, other facilities are not available.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj