



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 21, 1978

ATTORNEY GENERAL OPINION NO. 78- 120

Mr. Michael D. Mance
Assistant City Attorney
City Hall
8500 Santa Fe Drive
Overland Park, Kansas 66212

Re: Cities--Kansas Code Of Procedure For Municipal Courts

Synopsis: Pursuant to K.S.A. 12-4210, an arresting police agency may accept from an accused the bond required under the warrant of another municipality and then forward such bond to the issuing municipality by U.S. mail.

If an accused is unable to post bond set forth in the warrant, the arresting police agency may confine the accused to the local city or county jail, until said accused makes bond for his or her appearance or he or she appears before the municipal court, provided however, if the accused within 12 hours of his arrest has not yet posted bond or appeared before the municipal court, said accused shall be released from the jail on his or her own personal recognizance to appear at a later date.

In order to satisfy the 12 hour requirement of K.S.A. 12-4213 an accused may be brought before the municipal court in the jurisdiction in which he was arrested, even though the said warrant for his arrest was issued by another municipality.

* * *

Dear Mr. Mance:

As Assistant City Attorney for the city of Overland Park, Kansas, you request an opinion regarding several statutes within the Kansas Code of Procedure for Municipal Courts, K.S.A. 12-4101 et seq.

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K.S.A. 12-4210 provides thus:

"A warrant may be directed to any law enforcement officer within the state and may be executed any place within the state, by the arrest of the accused person. The officer need not have the warrant in his or her possession at the time of the arrest, but upon request, the officer shall show the warrant to the accused person as soon as possible. If the officer does not have the warrant in his or her possession at the time of the arrest, the officer shall then inform the accused person of the offense charged, of the fact that a warrant has been issued, and the amount of bond required."

You state that in implementing this provision cases arise where the arresting and issuing agencies are separated by a substantial distance. The large distance between the arresting and issuing agency makes it impractical for either the arresting agency to take the prisoner to the issuing agency or for the issuing agency to come and retrieve the prisoner from the point of arrest. You further state that the Kansas Code of Procedure for Municipal Courts contains no specific provisions dealing with the procedures to be followed in the posting of bonds for these situations.

To deal with the problem of posting of bonds in the abovementioned situation, you advise that the Overland Park Police Department propose to adopt a system whereby the Department, if it was the arresting agency, would ascertain the amount of the bond required and accept such bond from the accused. The Department would then mail that bond to the municipal court from which the warrant was issued. Additionally such a system would apply conversely so that other agencies within the State of Kansas could accept bonds from individuals arrested on Overland Park warrants and mail those bonds to the Overland Park Municipal Court.

You first inquire whether an arresting police agency may accept from an accused the bond required under the warrant of another municipality and then forward such bond to the issuing municipality by the United States mail. While the Kansas Code of Procedure for Municipal Courts contains no specific provisions dealing with the posting of bonds in the situation where the issuing agency and the arresting agency are separated by a large distance, the intent of the Kansas Legislature is evidenced by K.S.A. 12-4103 the pertinent part of which states:

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". . . Its provisions shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. If no procedure is provided by this code, the court shall proceed in any lawful manner consistent with any applicable law and not inconsistent with this code."

As you noted, a system similar to the one Overland Park Police Department hopes to adopt has been codified in the Kansas Code of Criminal Procedure by K.S.A. 22-2901 et seq:

K.S.A. 22-2102 provides that the Code of Criminal Procedure shall have application to proceedings in municipal courts only when specifically so provided by law. There is no express statute which renders provisions of the Code of Criminal Procedure concerning this subject applicable to municipal courts. Although the Code of Criminal Procedure is not expressly applicable on this point to municipal courts, under K.S.A. 12-4103, procedures which conform to the Code, or appropriate modifications thereof, might readily be adopted by municipal courts.

Thus, on this point, it is my opinion that a municipal court might proceed in a manner consistent with the Code of Criminal Procedure. Thus, it is our opinion that an arresting police agency may accept from an accused the bond required under the warrant of another municipality and then forward such bond to the issuing municipality by the United States mail.

You inquire secondly whether the arresting police agency may confine the accused in the local city or county jail if said accused is unable to post bond set forth in the warrant.

The function of bail, of course, is to enable the accused to regain his liberty pending disposition of the charges upon such terms and conditions that will assure his appearance at trial. The courts have observed that the right of a person to obtain release on bail should be heavily favored. Brandy v. U.S., ___ U.S. ___, 81 S. Ct. 1977, 5 L.Ed.2d 218 (1960), and the Kansas statutes evidence a clear intent forbidding needless pre-trial incarceration. See K.S.A. 22-2801 and K.S.A. 12-4213. Nevertheless, it has consistently been recognized that although a bail requirement may adversely affect an indigent defendant more so than other defendants, the requirement is constitutionally permissible if bail is necessary to insure the defendant's presence during judicial proceedings. See Dillehay v. White, 264 F. Supp. 164 (M.D. Tenn. 1966); White v. Gilligan, 351 F. Supp. 1012 (S.D. Ohio 1972).

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The principles set forth above are reflected in K.S.A. 12-4213. That statute provides in part:

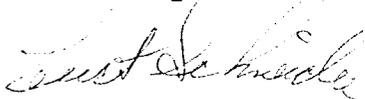
" . . . Any person who does not make bond for his or her appearance shall be placed in the city or county jail, to remain there until he or she makes bond for his or her appearance, or appears before the municipal court at the earliest practical time: *Provided however*, any such person who has not made bond and who had not appeared before the municipal court within twelve (12) hours after being arrested shall be released on his or her personal recognizance to appear at a later date."

Thus, following the principles set forth above and the language of K.S.A. 12-4213, it is our opinion that if an accused is unable to post bond set forth in the warrant, the arresting police agency may confine the accused to the local city or county jail pending an appearance before the municipal court or until said accused makes bond for his or her appearance, provided that if the accused within twelve hours of his arrest has not yet posted bond and has not yet appeared before the municipal court, he or she shall be released from the jail on his or her own personal recognizance to appear at a later date.

Your third question is related closely to the previous questions. You ask whether under K.S.A. 12-4213 an accused may be brought before the municipal court where he or she was arrested for his or her first appearance within the 12 hour limitation or must such an appearance be made before the issuing municipality's court within said 12-hour limitation.

Based on what has been previously discussed in this opinion and the intention of the Kansas Legislature to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delays, we are of the opinion that in order to satisfy the 12-hour requirement an accused may be brought before the municipal court in the jurisdiction in which he was arrested.

Sincerely,



CURT T. SCHNEIDER
Attorney General

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