



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 17, 1978

ATTORNEY GENERAL OPINION NO. 78- 149

Mr. Loren L. Taylor
Legal Advisor
Department of Police
Kansas City, Kansas 66101

Re: Immigration--Law Enforcement Officers--Powers

Synopsis: A "law enforcement officer" in Kansas has authority to make arrests for violation of the laws of the State of Kansas or ordinances of any municipality thereof, and does not have the power of arrest for violation of Federal immigration laws.

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Dear Mr. Taylor:

You ask whether a Kansas law enforcement officer, acting within his territorial jurisdiction, has authority to make an arrest for violation of Federal immigration laws, specifically Title 8 U.S. Code Section 1304 (e) which requires aliens to carry identification cards on their person.

Title 8 U.S. Code Section 1103 provides in part:

"(a) the attorney general shall be charged with the administration and enforcement of this Chapter and all other laws relating to the immigration and naturalization of aliens . . . He is authorized . . . to appoint such employees of the service as he deems necessary and to delegate to them

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or to any officer or employee of the Department of Justice in his discretion any of the duties and powers imposed upon him in this Chapter;"

Therefore, the statute obviously places the duty of administration and power of enforcement of the immigration laws under the direct supervision of the Attorney General of the United States.

The only statutory provision which gives enforcement powers to other law officers is found at Title 8 U.S. Code 1324 which makes punishable certain acts by persons operating means of transportation who facilitate the illegal entry of aliens into this country. Particularly, Title 8 U.S. Code Section 1324(b) provides:

"No officer or person shall have authority to make any arrest for violation of any provision of this Section except officers and employees of the service designated by the attorney general, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws."

This paragraph apparently gives a limited power to arrest to law enforcement officers who, usually found on the borders of the United States, discover aliens entering the United States illegally. However, since Section 1324 is part and parcel of the United States Code, the phrase "all other officers whose duty it is to enforce criminal laws" must of necessity be taken to mean all other officers whose duty it is to enforce the criminal laws of the United States.

Further, the powers of the Kansas law enforcement officers, be they officers of county-wide jurisdiction or of municipal jurisdiction, to arrest are governed by the Kansas Code of Criminal Procedure, K.S.A. 22-2101, et seq. Specifically, the jurisdiction of municipal police officers can be found in K.S.A. 1977 Supp. 22-2401(a)(2) which provides:

"Law enforcement officers employed by any city may exercise their powers as law enforcement officers anywhere within the city limits of the city employing them and outside of such city when on property owned or under the control of such city
. . . ."

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Subparagraph (4) provides:

"As used in this section: (a) 'Law enforcement officer' shall have the meaning ascribed to such term in K.S.A. 1977 Supp. 22-2202; . . . "

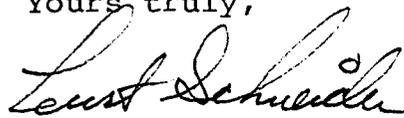
K.S.A. 1977 Supp. 22-2202 is the definition section for purposes of the Code of Criminal Procedure in Kansas. K.S.A. 22-2202(11) provides:

"'Law enforcement officer' means any person who by virtue of 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."

The two foregoing provisions of the Kansas Code of Criminal Procedure clearly set forth the jurisdiction and the powers of municipal policemen. Municipal policemen are empowered to make arrests for violation of the laws of the State of Kansas or the ordinances of any municipality.

The only conclusion then is that a "law enforcement officer" in Kansas has authority to make arrests for violation of the laws of the State of Kansas or ordinances of any municipality thereof, and does not have the power of arrest for violation of Federal immigration laws.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:MGM:jj