



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 8, 1978

ATTORNEY GENERAL OPINION NO. 78-158

Mr. Michael J. Malone
Douglas County Attorney
Judicial & Law Enforcement Center
Lawrence, Kansas 66044

Re: Sheriffs--Authority--Extrajudicial Notices

Synopsis: It is not a part of the official duties of a sheriff or of sheriffs' deputies to serve extrajudicial notices such as notice given by a landlord or tenant to the other terminating tenancy under K.S.A. 58-2570.

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Dear Mr. Malone:

You request my opinion concerning the authority of the county sheriff regarding the service of extrajudicial notices. In particular, you ask whether a deputy sheriff charged with the service of process is authorized or required to serve private notices, such as landlord's notice to terminate tenancy under K.S.A. 58-2570, which are not pursuant to any pending legal action or order of the court, or any other governmental action. These are notices for which no return is required and which are legally sufficient if posted by the interested parties only. You indicate that the question does not relate to the private employment of off-duty deputies, but only to the service of such notices by on-duty personnel acting in their official capacities.

You enclose a number of citations to relevant statutes. Like you, our own research does not indicate any directly applicable statutory authority. E.g., K.S.A. 19-812 states thus:

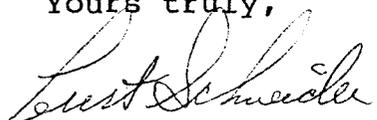
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"The sheriff, in person or by his under-sheriff or deputy, shall serve and execute, according to law, all process, writs, precepts and orders issued or made by lawful authority and to him directed, and shall attend upon the several courts of record held in his county, and shall receive such fees for his services as are allowed by law."

Under K.S.A. 19-813, the sheriff is responsible "for the service of process in civil or criminal cases, and under K.S.A. 60-303, of the Code of Civil Procedure, the sheriff is responsible for "[s]ervice of all process." Thus, the authority of the sheriff and sheriffs' deputies extends to the service of process, in pending cases, and "writs, precepts and Orders" which are "issued or made by lawful authority and to him directed." K.S.A. 19-812. The sheriff and deputy sheriffs are public officers, and in their official capacity, are authorized to perform only those acts which are incident to their official duties. Under K.S.A. 58-2570, e.g., either a landlord or tenant may terminate a tenancy by giving notice to the other within prescribed periods. The giving of such notice for and on behalf of either the landlord or the tenant is not a responsibility of the sheriff or of any other public officer. If a deputy sheriff undertakes to give a notice to terminate on behalf of either a landlord or a tenant, that deputy acts solely in a private capacity, for the deputy has no statutory responsibility, or indeed official authority by virtue of his or her office, to act as a private agent for either a landlord or tenant in the furnishing of the statutory termination notification.

As you point out, there appears to be no statute which expressly prohibits the sheriff or the sheriff's deputies from serving such extrajudicial notices. Such a prohibitory statute is not necessary, however, because the official authority of the sheriff, and therefore of the deputies, extends only to the performance of those acts which are reasonably incident to the performance of their official duties. The service of notices of termination of tenancy by either a landlord or tenant under K.S.A. 58-2570 is not an official responsibility of the sheriff, and in my judgment, the service of such extrajudicial notices by deputies is beyond the scope of the authority which they hold by virtue of their offices.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj