



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

September 12, 1978

ATTORNEY GENERAL OPINION NO. 78- 287

Mr. James R. Cantrell
Special Agent in Charge
Department of the Treasury
United States Secret Service
Post Office Box 2574
Kansas City, Missouri 64142

Re: Law Enforcement Officers--Powers Of Arrest--U.S. Secret Service Agents

Synopsis: Secret Service agents exercise no law enforcement powers to enforce Kansas Criminal law nor mental illness law.

* * *

Dear Mr. Cantrell:

You inquire concerning the law enforcement authority of Secret Service Agents. At the outset, we must direct your attention to Title 18, U.S.C. § 3056 which delineates the powers of secret service agents, and which provides they may

" . . . execute warrants issued under the authority of the U.S. . . . "

and

"are authorized to make arrests without warrant for any offense against the U.S. committed in their presence, or for any felony cognizable under the laws of the U.S. if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony." [Emphasis added.]

Mr. James R. Cantrell
Page Two
September 12, 1978

The phrase "laws of the U.S." means federal law, not state law. Therefore, in the absence of a state law empowering your agents to arrest for state violations, your agents do not act as state law enforcement officers with the powers and privileges appurtenant thereto.

You inquire first whether Secret Service agents act as law enforcement officers or citizens when they arrest for Kansas felonies and misdemeanors?

K.S.A. 22-2401 sets forth the arrest powers of "law enforcement officers". [Emphasis added.] Further, K.S.A. 1977 Supp. 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 definition of law enforcement officer does not include persons empowered to make arrests for violations of the laws of the United States. Therefore, Secret Service agents are not law enforcement officers as the term is used in the Kansas Code of Criminal Procedure, and are not empowered to make arrests for Kansas violations under K.S.A. 22-2401. Rather, these agents would have the "citizens' power of arrest" for Kansas violations under K.S.A. 22-2403.

You inquire, secondly, whether Secret Service agents may execute Kansas arrest warrants? K.S.A. 22-2305 provides in part:

"The warrant shall be executed by a law enforcement officer . . ."

Since, as hereinbefore stated, your agents are not "law enforcement officers" within the meaning of K.S.A. 1977 Supp. 22-2202(11), they are not empowered to execute Kansas arrest warrants.

Thirdly you ask whether Secret Service agents have the same authority as Kansas law enforcement officers to take a person into custody under Kansas mental illness statutes, for the purpose of involuntary committment as a mentally ill person?

K.S.A. 1977 Supp. 59-2908, as amended by 1978 Session Laws of Kansas, Chapter 223, Section 4, provides in part:

Mr. James R. Cantrell
Page Three
September 12, 1978

"Any peace officer who has reasonable belief upon observation, that any person is a mentally ill person and because of such persons illness 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 . . ." [Emphasis added.]

Further, K.S.A. 1977 Supp. 59-2902(14) as amended by 1978 Session Laws of Kansas, Chapter 223, Section 1, provides:

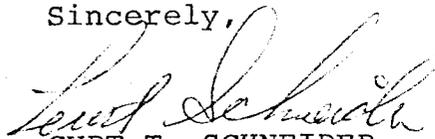
"The terms 'peace officer' shall mean any sheriff, regularly employed deputy sheriff, state highway patrolman, regularly employed city police officer, or a law enforcement officer of any county law enforcement department."

Again, because Secret Service Agents are not included within the definition of peace officer, for purposes of the mental illness statutes, such Secret Service agents are not peace officers empowered to take custody. However, under Section 7 of the act, the district court may issue a temporary protective custody order "upon the verified application of any person, if the application provided for in 59-2913 has been filed with the Court." [Emphasis added.]

Agents so applying are considered citizens under the act and may not take a subject into custody.

In summary, Secret Service agents exercise no law enforcement powers to enforce Kansas Criminal law nor mental illness law.

Sincerely,


CURT T. SCHNEIDER
Attorney General

CTS:MGM:jj