



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

September 12, 1978

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CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 78- 291

Major General Edward R. Fry
Adjutant General of Kansas
Kansas Military Department
27th and Topeka Boulevard
Topeka, Kansas 66611

Re: Militia, Defense and Public Safety--Code of Military
Justice--General Provision

Synopsis: K.S.A. 48-3107 imposes a duty upon peace officers of this state to comply with the requirements of processes or mandates issued to them by military courts pursuant to the Kansas Code of Military Justice. Sheriffs thus directed under said statute to arrest persons subject to the jurisdiction of said courts shall comply with the requirements made upon them by such processes or mandates.

* * *

Dear General Fry:

You advise that the Kansas National Guard has initiated summary court-martial proceedings against certain of its members who are citizens and residents of Douglas County, Kansas. The judgment rendered in those proceedings found defendants guilty, and jail sentences were accordingly imposed. Thereafter the Sheriff of Douglas County was supplied true copies of the proceedings and record of trial with the request for the confinement of defendants made pursuant to K.S.A. 48-2804. However, the Sheriff has declined to honor the request apparently stating that while he may be under a duty to confine he is not under a duty to take the errant individuals into custody. Thus, you request the opinion of this office whether under the circumstances above described the Douglas County Sheriff is required by law to apprehend defendants who have been adjudged guilty by a military court pursuant to

Major General Edward R. Fry
Page Two
September 12, 1978

the Kansas Code of Military Justice and who has also been sentenced to confinement in a county jail.

Pertinent provisions of K.S.A. 48-2804 state thus:

"(a) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the state military forces or *in any jail, penitentiary, or prison* designed for the purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state or of any political subdivision thereof.

* * *

(c) *The keepers, officers, and wardens of city or county jails and of other jails, penitentiaries, or prisons designated by the governor, or by such person as the governor may authorize to act under K.S.A. 48-2205, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for so receiving or confining a person.*"
[Emphasis added.]

Apparently the Sheriff has reviewed the above language and not finding express provisions requiring or authorizing arrests has declined to so arrest the defendants above discussed.

K.S.A. 48-2804 does not specifically authorize or require the keepers, officers and/or wardens of county jails to make the arrest when such officers happen also to be county sheriffs. However, K.S.A. 48-3107 provides in clear, express language the following:

Major General Edward R. Fry
Page Three
September 12, 1978

(a) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenas and subpoenas *duces tecum* and enforce by attachment attendance of witnesses and production of books and records, when it is within the state and the witnesses, books and records sought are also so located.

(b) Process and mandates may be issued by summary courts-martial, provost courts, or the president or military judge of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this code.

(c) *All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this code, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.* [Emphasis added.]

The key words here are "process" and "mandate." The Code does not provide definition for either of these terms. It is a rule of statutory construction in this jurisdiction that ". . . words in common use are to be given their natural and ordinary meaning" *Roda v. Williams*, 195 Kan. 507, 511, 407 P.2d 741 (1965), *State ex rel. v. City of Overland Park*, 215 Kan. 700, 712, 713, 527 P.2d 1340 (1974). See generally, 2A *Sutherland, Statutory Construction*, § 47.28 (4th ed. 1973). *Ballentine's Law Dictionary*, (3d ed. 1969) at page 771 defines "mandate" as "[a]n order; an authoritative command by the court." The same reference defines "process" at page 1001 as "[a] writ, warrant of arrest, or other means of subjecting person or property to the jurisdiction of the court." See generally 62 *Am.Jur.2d Process* §§ 1, et seq.

Applying these definitions to the grant of authority broadly conveyed by K.S.A. 48-3107, it appears clear that the legislature manifestly intended to authorize military courts to employ Kansas

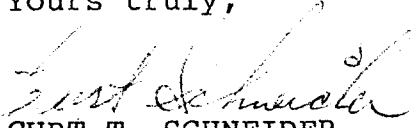
Major General Edward R. Fry
Page Four
September 12, 1978

peace officers, e.g., municipal police officers, sheriffs, etc., in making such arrests as are necessary to enforce the judgment and orders of such courts. Important to note in conjunction with this express authorization for peace officers to so act in assisting such courts is the express duty imposed on peace officers by the express language found in subparagraph (c) of K.S.A. 48-3107 as above emphasized:

"All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents."

The obligation imposed upon the peace officer to whom a process or mandate is thus directed is quite clear. Accordingly, it is the opinion of this office that it is the duty of a sheriff under the express provisions of K.S.A. 48-3107 upon receiving a military court's process or mandate to arrest individuals subject to said court's jurisdiction and to comply with the requirements made upon him or her thereby.

Yours truly,



CURT T. SCHNEIDER
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cc: Brigadier General Edward DeGraw
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