



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

September 29, 1978

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ATTORNEY GENERAL OPINION NO. 78-308

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

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

Synopsis: Civil officers, such as clerks of district courts are not authorized or required under Kansas Code of Military Justice to provide assistance via execution of processes and sentences of military courts-martial unless and until such officers are so empowered by regulations promulgated pursuant to said code. Such regulations have not been promulgated.

* * *

Dear General Fry:

You advise some months ago summary court-martial proceedings were conducted by the Kansas Army National Guard pursuant to provisions of the Kansas Code of Military Justice, K.S.A. 48-2101. Several individuals were found guilty thereunder and monetary fines were imposed against them. They have refused to pay said fines. Attempts to secure assistance in collecting these monies through the Kansas district courts have been met with clerks refusing to issue the necessary executions, suggesting they have no authority to make such collections through the facilities of the district court. You thus request the opinion of this office whether a clerk of a district court is required to accept for filing a summary court-martial record of trial prepared pursuant to K.S.A. 48-2719 and issue a requested execution for the purpose of collecting fines imposed by such court-martial.

Major General Edward R. Fry

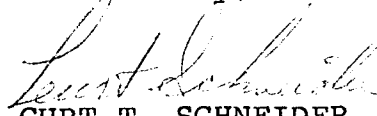
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The provisions of the code do not expressly authorize or require a clerk of the district court to assist a military court-martial by issuing an execution. The code, however, permits regulations which may prescribe the civil officers to execute the processes and sentences of Kansas military courts-martial. A review of the regulations adopted pursuant to the code supplied this office by your staff do not appear to authorize or require clerks of the district court to assist military courts martial.

Accordingly, absent the necessary regulations promulgated under the code as required by K.S.A. 48-3106, I cannot but conclude that clerks of Kansas district courts do not have the authority to execute processes or mandates of Kansas military courts-martial.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JPS:kj