



STATE OF KANSAS

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March 21, 1979

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ATTORNEY GENERAL OPINION NO. 79- 38

Dennis W. Moore, Esq.
District Attorney
Tenth Judicial District
Johnson County Courthouse
P. O. Box 728, 6th Floor Tower
Olathe, Kansas 66061

Re: State Boards, Commissions and Authorities--Law
Enforcement Training Center--Imposition and
Collection of Assessments Therefor

Synopsis: Highway Patrol officers and other police officers
are not officers of the court within the context
of K.S.A. 1978 Supp. 74-5612(a). However, when-
ever any such officer is furnished an appearance
bond pursuant to K.S.A. 1978 Supp. 8-2107, such
officer also is required by K.S.A. 1978 Supp.
74-5613 to collect the appropriate assessment
specified in K.S.A. 1978 Supp. 74-5612(a).

* * *

Dear Dennis:

You have requested our opinion regarding certain provisions
of Chapter 323 of the 1978 Session Laws of Kansas, which
amended and supplemented K.S.A. 74-5601 *et seq.* In particular,
you have inquired "whether officers of the Kansas Highway
Patrol and other police officers are officers of the court"
within the purview of K.S.A. 1978 Supp. 74-5612(a), which
reads in pertinent part as follows:

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"Whenever any officer of any court of this state or any municipal court shall impose a fine or order a bail forfeiture as a penalty for a violation of any of the laws of this state, ordinances of a city or resolutions of a county, such officer shall also impose and collect an assessment in addition to such fine or forfeiture. Such officer shall remit all moneys received from such assessments to the state treasurer at least monthly."

In determining the application of this statute, the term "officer of the court" must be interpreted within the framework in which it is posed. For example, a sheriff is an elective public officer and as such is "an officer of the court" subject to its orders and directions. 80 C.J.S. Sheriffs and Constables, §1. Further, K.S.A. 1978 Supp. 21-3110(19)(c) includes within the term judicial officer "a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy." Additionally, K.S.A. 1978 Supp. 20-901 states an official reporter for a district court is "a sworn officer of the court." Therefore, the answer to your inquiry is not provided by determining whether Highway Patrol troopers are "officers of the court," but rather whether as such they are among the class contemplated by the provisions of K.S.A. 1978 Supp. 74-5612(a).

From our reading of this statute, it is quite clear that it is operative only after the imposition of a fine or bail forfeiture. Thus, K.S.A. 1978 Supp. 74-5612(a) applies only to those officers of the court empowered to impose fines or order the forfeiture of bail. Clearly, officers of the Highway Patrol and other police officers do not possess such powers and, therefore, are not within the class of "officers of the court" contemplated by this statute.

However, the foregoing conclusion is not determinative of your broader inquiry whether officers of the Highway Patrol and other police officers are subject to the provisions of the 1978 amendments to K.S.A. 74-5601 et seq. In this regard, K.S.A. 1978 Supp. 74-5613 is relevant. Said statute provides:

"Whenever a deposit of bail is required for any offense to which this act applies, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed under K.S.A. 1978 Supp. 74-5612. If such bail is forfeited the assessment shall be forwarded to the state treasurer as provided in K.S.A. 1978 Supp. 74-5612. Whenever any bail is returned to the person depositing the same, the assessment shall also be returned."

By virtue of K.S.A. 1978 Supp. 74-5612(a), the foregoing statute applies to any violation of any of the laws of this state; therefore, violations of the traffic laws of this state would be subject to its provisions. Appearance bonds for traffic offenses are authorized by K.S.A. 1978 Supp. 8-2107, subsection (c) of which provides:

"In lieu of depositing a valid driver's license with the halting officer . . . the person halted may elect to give bond in the amount specified in subsection (c) of this section for the offense for which the person was halted, and in the event such person does not have a valid driver's license, such person shall be required to give such bond."

In our judgment, whenever a person elects to give an appearance bond pursuant to the foregoing statutory provisions, such person also must deposit with the "halting officer" the appropriate assessment designated in K.S.A. 1978 Supp. 74-5612(a). We have reached this conclusion by reason of the requirement of K.S.A. 74-5613 that such assessment be collected whenever a "deposit of bail" is required.

The terms "bail" and "appearance bond" are inseparable in that K.S.A. 1978 Supp. 22-2202(4) provides: "'Bail' means the security given for the purpose of insuring compliance with the terms of an appearance bond." Appearance bond is defined by subsection (1) of the same statute, as follows: "'Appearance bond' means an undertaking, with or without security, entered into by a person in custody by which such person binds himself or herself to comply with such conditions as are set forth therein." Therefore, under the provisions of K.S.A. 1978 Supp. 74-5613, upon the deposit of bail or a security in the

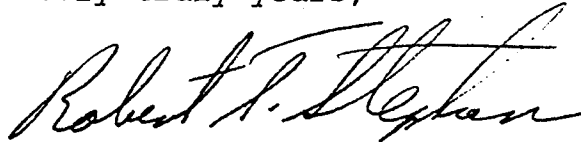
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form of cash, a bank card draft from any valid and unexpired credit card or a guaranteed arrest bond certificate pursuant to the provisions of K.S.A. 1978 Supp. 8-2107(c), there also must be deposited the assessment specified in K.S.A. 1978 Supp. 74-5612(a).

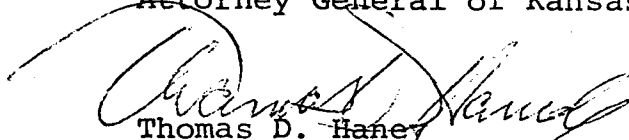
The amount of the "assessment deposit" for certain traffic offenses may be ascertained from the list of appearance bonds provided by K.S.A. 1978 Supp. 8-2107(e). Thus, if an appearance bond is listed as twenty dollars (\$20), this is the amount subject to forfeiture and the required "assessment deposit" to be collected under the provisions of K.S.A. 1978 Supp. 74-5612(b)(2) would be two dollars (\$2.00).

Because subsections (a) and (c) of K.S.A. 1978 Supp. 8-2107 specifically authorize members of the State Highway Patrol or any other police officer to require posting of bonds under certain conditions, such officers also should require the simultaneous deposit of those assessments enumerated in K.S.A. 1978 Supp. 74-5612.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Thomas D. Haney
Deputy Attorney General

RTS:TDH:gk

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