



STATE OF KANSAS

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May 19, 1983

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ATTORNEY GENERAL OPINION NO. 83- 79

Mr. Howard Schwartz
Judicial Administrator
Kansas Judicial Center
Topeka, Kansas 66612

Re: Cities and Municipalities--Code for Municipal
Courts; General Provisions--Municipal Court;
Jurisdiction

Synopsis: No provision of the Code of Procedure for Municipal Courts, or any other statutory provision, grants general authority to cities to penalize ordinance violations by imprisonment for a term commensurate to that of a felony. Further, cities do not have such authority under constitutional home rule powers, since punishment of serious offenses, for which a term of imprisonment in excess of one year may be imposed, is not a "local affair," as said term is used in Article 12, §5 of the Kansas Constitution. However, where the state of Kansas has, by statute, delegated to cities the authority to impose such a sentence with respect to a particular ordinance violation, a municipal judge may validly impose the sentence. The state of Kansas has delegated such authority with respect to third or subsequent violations of Section 31 of the Standard Traffic Ordinance of Kansas Cities, but has not delegated such authority with respect to violations, for a third or subsequent time, of Section 192 of said Ordinance. Cited herein: K.S.A. 8-262, 8-1401, 8-1568, 8-2001, 8-2204, 12-4101, 12-4104, 12-4509, 12-4510, 13-401, 13-424, 13-601, 14-401, 14-439, 14-801, 15-440, 15-501, 20-1401, 20-1403, 20-1424,

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20-1428, 20-1501, 20-1502, 20-1601, 20-1603, 20-1801,
20-1803, 20-1901, 20-1902, 20-2001, 20-2002, 20-2101,
20-2102, L. 1965, ch. 90, §1, L. 1973, ch. 61, §12-4702,
Kan. Const., Art. 12, §5.

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Dear Mr. Schwartz:

You request our opinion concerning several jurisdictional questions confronting municipal courts. Your questions, and our responses and discussion relative thereto, are set forth below.

- "1. In Kansas, may a municipal court judge validly impose a sentence of confinement greater than one year? If so, in what facility is the sentence of confinement to be served?"

Prior to the adoption of the Kansas Code of Procedure for Municipal Courts, K.S.A. 12-4101 et seq., various statutes provided for the operation and establishment of "police courts" and "city courts" in Kansas cities. See G.S. 1949 (and Supplements thereto), 13-601, 14-801, 15-591, 20-1401, 20-1424, 20-1501, 20-1601, 20-1801, 20-1901, 20-2001, and 20-2101. The jurisdiction of police courts and city courts, in criminal proceedings, was limited, by statutory provisions, to misdemeanor or petty offenses. See G.S. 1949 (and Supplements thereto), 13-424, 14-439, 15-440, 20-1403, 20-1428, 20-1502, 20-1603, 20-1803, 20-1902, 20-2002, and 20-2102. Upon adoption of the Kansas Code of Procedure for Municipal Courts (or, as to some of the city courts, shortly prior thereto or shortly thereafter), statutes relating to procedure and jurisdiction in police courts and city courts were repealed, and the following statutory jurisdiction was prescribed by the Code for municipal courts:

"The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city." (Emphasis added.) K.S.A. 12-4104.

We do not think that by enacting the above-quoted jurisdictional statute, the Kansas Legislature intended to grant general authority to cities to prescribe penalties (for ordinance violations) which are in excess of those traditionally set for misdemeanors, and to generally expand the jurisdiction of municipal tribunals so as to permit the imposition of such penalties by municipal judges.

In regard to the lack of any general authority of cities to prescribe penalties commensurate to those set for felonies, it should first be noted that upon enactment of the Code of Procedure for Municipal Courts, the legislature repealed statutory provisions (K.S.A. 13-424, 14-439, and 15-440) which authorized cities to impose fines and imprisonment for ordinance violations. L. 1973, ch. 62, §12-4702. However, rather than indicating a legislative intent to authorize cities to prescribe any term of imprisonment for an ordinance violation, it is our opinion that the repeal of these statutes simply reflected legislative recognition of city home rule powers emanating from Article 12, §5 of the Kansas Constitution. The legislature had previously, in 1965, repealed statutes (K.S.A. 13-401, 14-401, 15-401) granting to cities the general authority to enact ordinances, upon express recognition that, after the effective date of the Home Rule Amendment, it was no longer necessary for the legislature to confer upon cities powers over their local affairs and government. See L. 1965, ch. 90, Preamble, §1. Therefore, in our opinion, the enactment of the Code of Procedure for Municipal Courts, and repeal of the aforesaid statutes, do not constitute general authority for cities to penalize ordinance violations by imprisonment for a term commensurate to that of a felony. Further, we are unaware of any Kansas statute which grants such general authority.

Having concluded that certain statutory provisions relating to the authority to adopt ordinances, and penalize violations thereof, were repealed because of the Home Rule Amendment, we are impelled to consider whether a city may, pursuant to home rule powers, punish an ordinance violation by imprisonment in excess of one year. In considering whether punishment is permissible, it should first be noted that the Home Rule Amendment empowers Kansas cities to determine only "their local affairs and government." Further, the Kansas Supreme Court has held that Kansas cities need not rely on enabling statutes in order to act by ordinance in matters of local concern, City of Junction City v. Lee, 216 Kan. 495, 498 (1975), and that the enactment of the state's criminal code does not preempt cities from enacting ordinances defining and penalizing criminal conduct. Garten Enterprises, Inc. v. City of Kansas City, 219 Kan. 620, 624 (1976). Additionally, this office has previously opined that, where the state of Kansas has declared an act or omission by law to be a felony, municipalities are without authority to prescribe misdemeanor sanctions for the same conduct. See Kansas Attorney General Opinion No. 81-222. However, neither the Kansas Supreme Court, nor this office, has had occasion to consider, generally, whether a penalty provision, authorizing

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a term of imprisonment in excess of one year, is a "local affair," for purposes of determining the validity of an ordinance adopted pursuant to home rule powers.

As no Kansas case addresses the question of whether a city ordinance may, pursuant to home rule powers over local affairs and government, prescribe "felony-level" sanctions for violations thereof, we must turn elsewhere for guidance. McQuillin, a recognized authority on the law of municipal corporations, indicates that serious offenses are not a "local concern," stating as follows:

"In many jurisdictions the rule is that felonies and high, gross or indictable misdemeanors cannot be dealt with by ordinance under general power, since they are regarded as of statewide and not local concern. Conversely, an ordinary or minor misdemeanor, petty offense or mere infraction of law is a proper subject for an ordinance." (Emphasis added.) [Footnotes omitted.]
McQuillin, Municipal Corporations (3rd Ed.) §23.06.

We concur in the above-stated rule, which is followed in many jurisdictions, and it is our opinion that punishment of serious offenses, for which a term of imprisonment in excess of one year may be imposed, is not a "local affair," as said term is used in Article 12, §5 of the Kansas Constitution. Therefore, in our judgment, a city ordinance may not, pursuant to home rule powers, prescribe a term of imprisonment in excess of one year for violations thereof.

As a city has no general authority to adopt an ordinance which authorizes a sentence of confinement greater than one year, it follows that a municipal court judge, whose jurisdiction is limited to sentencing persons found guilty of violating ordinances (K.S.A. 12-4104 and 12-4509), may not ordinarily impose a sentence of confinement greater than one year. However, as will be discussed below, where the state of Kansas has, by statute, delegated to cities the authority to impose such a sentence with respect to a particular ordinance violation, a municipal judge may validly impose such a sentence, and, pursuant to K.S.A. 12-4510, the sentence is to be served by confinement in the city jail.

- "2. If a city in Kansas adopts the Standard Traffic Ordinance for Kansas Cities (League of Kansas Municipalities: 1982), does a municipal court have jurisdiction

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to hear and determine a case in which a person is alleged to have violated section 192 of the Standard Traffic Ordinances for a third or subsequent time, in that K.S.A. 1982 Supp. 8-262 makes such third or subsequent violation a felony?"

Section 192 of the Standard Traffic Ordinance for Kansas Cities provides as follows:

"Any person who drives a motor vehicle on any public highway of this city at a time when his privilege so to do is canceled, suspended or revoked shall upon a first conviction be punished by imprisonment for not more than six (6) months or fined not to exceed \$1,000, or both. Every person convicted of violating this section shall upon a second conviction be punished by imprisonment not to exceed one year or fined not to exceed \$2,500, or both. Every person convicted of violating this section shall upon a third or subsequent conviction be punished by imprisonment of not less than one year and a maximum term which shall be fixed by the court at not less than two years nor more than five years or fined not to exceed \$5,000, or both. No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257 to the return of such person's license or was, at the time of arrest, eligible under K.S.A. Supp. 8-256 to apply for a new license to operate a motor vehicle. Every person convicted under this section shall be sentenced to at least 5 days imprisonment and fined at least \$100 and upon a second or subsequent conviction shall not be eligible for parole until completion of at least five days imprisonment. (K.S.A. Supp. 8-262)" (Emphasis added.)

The provisions of the above-quoted section are identical to those of subsection (a) of K.S.A. 8-262, except that the statute prescribes the penalties for violations thereof by characterizing them as class B and A misdemeanors, and class E felonies, re-

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spectively. In Kansas Attorney General Opinion No. 82-155, this office opined that a city ordinance covering the offense proscribed by K.S.A. 1981 Supp. 8-262 must contain the same penalties found in the statute, and that the imposition (by a municipal court) of a sentence commensurate with a class E felony did not violate the constitutional right to trial by jury. However, we did not, in said opinion, consider whether the imposition of a sentence equivalent to a class E felony, for a third conviction of violating an ordinance which is identical to K.S.A. 8-262, was within the jurisdiction of a municipal court. We now consider said issue for the first time.

As noted in our response to question number one, above, a municipal court has jurisdiction to impose a sentence of confinement greater than one year only where the state of Kansas has, by statute, delegated to cities the authority to impose such a sentence with respect to a particular ordinance violation. We are unaware of any delegation of authority, either express or implied, which would permit a city to impose a penalty commensurate to a class E felony for a third violation of a city ordinance covering the offense proscribed by K.S.A. 8-262(a). We conclude, therefore, that a municipal court does not have jurisdiction to hear and determine a case in which a person is alleged to have violated section 192 of the Standard Traffic Ordinance for Kansas Cities for a third or subsequent time.

Although you have not requested an opinion relative thereto, we are impelled to consider whether a municipal court would have jurisdiction to hear and determine a case in which a person was charged with violating, for a third and subsequent time, section 31 of the Standard Traffic Ordinance for Kansas Cities, which section sets forth an ordinance provision identical to K.S.A. 8-1568(a) (fleeing or attempting to elude a police officer). The last cited statute is part of the Uniform Act Regulating Traffic on Highways, K.S.A. 8-1401 to 8-2204, and the application of said Act is governed by the following statutory provision:

"The provisions of this act shall be applicable and uniform throughout this state and in all cities and other political subdivisions therein, and no local authority shall enact or enforce any ordinance in conflict with the provisions of this act unless expressly authorized; however, local authorities may adopt additional traffic regulations which are not in conflict with the provisions of this act." (Emphasis added.) K.S.A. 8-2001.

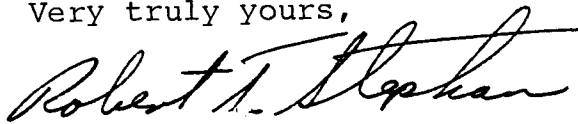
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In City of Garden City v. Miller, 181 Kan. 360, 365 (1957), the Kansas Supreme Court, in construing the forerunner of the above-quoted statute, held that the underscored language, above, authorized cities to "adopt additional traffic ordinances which are not in conflict with the provisions of the Uniform Act."

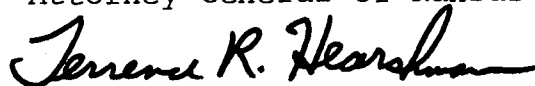
An ordinance identical to K.S.A. 8-1568(a) (such as Section 31 of the Standard Traffic Ordinance for Kansas Cities), including the "felony-level" sentence provided for a third and subsequent conviction, would not, in our judgment, conflict with the provisions of the Uniform Act Regulating Traffic on Highways. Additionally, in our opinion, by virtue of the underscored portion of K.S.A. 8-2001, above, the state of Kansas has delegated to cities the authority to impose a sentence commensurate to that prescribed by K.S.A. 8-1568(a), where a city has adopted a "parallel" ordinance covering the offense proscribed by said statute. Therefore, in our judgment, a municipal court has jurisdiction to hear and determine a case in which a person is charged with violating, for a third and subsequent time, Section 31 of the Standard Traffic Ordinance for Kansas Cities.

As your third and fourth questions, relating to sentencing, confinement and parole for "felony-level" violations of section 192 of the Standard Traffic Ordinance for Kansas Cities are moot since we have concluded that a municipal court does not have jurisdiction to hear and determine such a case, we will not respond to said questions herein.

Very truly yours,



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RTS:BJS:TRH:jm