



STATE OF KANSAS

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April 11, 1984

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ATTORNEY GENERAL OPINION NO. 84- 32

Morgan Metcalf
Butler County Attorney
Butler County Judicial Building
El Dorado, Kansas 67042

Re: Counties and County Officers -- County Attorneys --
Duties; Prosecution of Violations of State Statute
Occurring Within a City

Synopsis: K.S.A. 19-702 provides that it is the duty of the county attorney to prosecute all cases arising out of the criminal statutes of this state which arise in his or her county. If such a violation occurs, it is immaterial whether it takes place within or without the limits of any city located in the county, or whether the officer issuing the citation or making the arrest is an employee of the city or county. In any violation of a state criminal statute, it is the function of the county attorney to prosecute, and such prosecution may not be declined, or additional conditions attached (i.e. payment of costs) on the grounds that the violation took place within the city. Cited herein: K.S.A. 1983 Supp. 8-1567, K.S.A. 12-4111, 12-4113, 19-702, 19-706b.

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Dear Mr. Metcalf:

As County Attorney of Butler County, Kansas, you request our opinion on several inter-related questions concerning your duties. Specifically, you inform us that the City of Rose Hill does not have an ordinance for the offense of driving a vehicle

under the influence of alcohol or drugs, and therefore has instructed its police officers to issue citations based on the state statute which proscribes this conduct, K.S.A. 1983 Supp. 8-1567. These citations are then forwarded to your office for prosecution. You inquire whether: (1) your office is required to handle these cases; and, if so, whether (2) you may impose a requirement that the city compensate your office; or (3) name the city attorney as a special prosecutor for such offenses.

The statute relevant to your inquiries, K.S.A. 19-702, has remained unchanged since 1868. It states:

"It shall be the duty of the county attorney to appear in the several courts of their respective counties and prosecute or defend on behalf of the people all suits, applications or motions, civil or criminal, arising under the laws of this state, in which the state or their county is a party or interested."

Numerous cases have applied this statute in determining the duties of a county attorney. In Sampson v. Rumsey, 1 Kan.App.2d 191 (1977), the court said (at 197):

"It has long been recognized that the county or district attorney is the chief law enforcement official in his jurisdiction and that a criminal proceeding is a matter of state concern and the control of it is in the county attorney. (State v. Pruett, 213 Kan. 41, 515 P.2d 1051; State v. Kilpatrick, 201 Kan. 6, 439 P.2d 99.) It is his duty to inquire into the facts of violations. If the inquiry disclose the fact that an offense has been committed, he must institute proceedings for its punishment. (State v. Trinkel, 70 Kan. 396, 78 Pac. 854.)"

It has also been held that, as to violations of criminal statutes occurring within the county, a county attorney has the powers of an attorney general. State ex rel. v. Baker, 156 Kan. 439 (1943), State ex rel. v. Wyandotte County Comm'rs, 140 Kan. 744 (1934). Finally, a county attorney has wide discretion in the prosecution of criminal cases. State v. Antwine & McHenry, 6 Kan.App.2d 900 (1982).

Of course, there exist limits to both the authority and discretion of a county attorney. A county attorney cannot prosecute violations of a city ordinance, in that such violations

do not arise under the laws of this state. State ex rel. v. Vandyne, 159 Kan. 378, 384 (1945). Also, while a county attorney has discretion in the prosecution of criminal violations, such discretion has been defined as that which:

"permits him to refrain from prosecuting whenever he, in good faith and without corrupt motives or influences, thinks that a prosecution would not serve the best interests of the state, or that, under the circumstances, a conviction could not be had, or that the guilt of the accused is doubtful or not capable of adequate proof." (Citations omitted) State ex rel. v. Richardson, 229 Kan. 234, 240 (1981)

Accordingly, a blanket dismissal of all citations on the grounds they were issued in the City of Rose Hill would be an abuse of discretion.

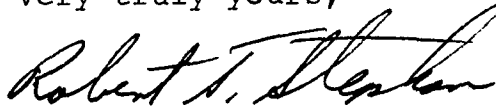
In our opinion, there can be no question that the city has taken a permissible option in declining to have its own DUI ordinance. While K.S.A. 1983 Supp. 8-1567(n) permits a city to have such an ordinance, the terms of which are in conformity with the statute, it is nowhere required that this be done. The police officers of Rose Hill are authorized to enforce both municipal ordinances and statutes of this state, in that they are officials of the public, not merely the city. Peters v. City of Lindsborg, 40 Kan. 654 (1889), Anderson v. Shawnee County, 91 Kan. 362 (1914). See also K.S.A. 12-4111 and 12-4113. Accordingly, when a public officer issues a citation which charges a violation of K.S.A. 1983 Supp. 8-1567, it becomes a matter "arising under the laws of this state" (K.S.A. 19-702), and so falls within the duty of the county attorney to prosecute in the same manner as any other DUI case.

Nor do we think that your office can make prosecution of such cases contingent on the payment by the city of a fee for each case, or upon the handling of the actual proceedings by the city attorney, acting as a "special prosecutor." No additional compensation is due to a county attorney for performing duties which fall within the scope of K.S.A. 19-702, a rule which has been recognized in Kansas for well over a hundred years. Commissioners of Leavenworth County v. Brewer, 9 Kan. 307 (1872). Additionally, while a county attorney has the authority to appoint deputies to assist him or her in the performance of official duties (K.S.A. 19-706b), this power does not rise to the level of a precondition for the handling of any matter, including those arising under a state statute within a city's limits. This is not to say that the county cannot pay for the hiring of the city attorney as an assistant county attorney or

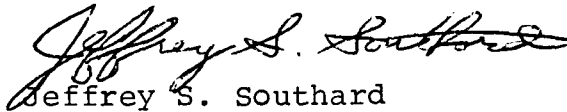
that the city would not be asked to assist in funding the costs of such prosecutions. Rather, this is to say that the county has no power to require the city to pay for the cost of such prosecution or require the city attorney to serve as an assistant to the county attorney.

In conclusion, K.S.A. 19-702 provides that it is the duty of the county attorney to prosecute all cases arising out of the criminal statutes of this state which arise in his or her county. If such a violation occurs, it is immaterial whether it takes place within or without the limits of any city located in the county, or whether the officer issuing the citation or making the arrest is an employee of the city or county. In any violation of a state criminal statute, it is the function of the county attorney to prosecute, and such prosecutions may not be declined, or additional conditions attached (i.e. payment of costs), on the grounds that the violation took place within a city.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General