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May 30, 1984

ATTORNEY GENERAL OPINION NO. 84- 43

Thomas E. Osborn
434 Brotherhood Building
Minnesota Avenue at 8th Street
Kansas City, Kansas 66101

Re: Cities and Municipalities -- Municipal Courts --
Traffic Violations; Failure to Appear

Synopsis: A person who is stopped for a violation of a municipal traffic ordinance may be issued a complaint and notice to appear pursuant to K.S.A. 12-4205. The notice to appear, which is signed by the person who is detained, constitutes a promise to attend a specified municipal court hearing, and may be enforced through the issuance of a warrant if no appearance is made. K.S.A. 12-4306 provides that such a warrant may be enforced by any law enforcement officer in the state through the collection of a cash appearance bond. However, unlike a similar provision in the Uniform Act Regulating Traffic (K.S.A. 8-2110), K.S.A. 12-4306 contains no provision that a person's non-appearance also subjects him or her to driver's license suspension proceedings. Accordingly, a municipal court is required to notify the division of motor vehicles of its proceedings only as provided by K.S.A. 8-2115. Cited herein: K.S.A. 8-2105, 8-2106, 8-2110, 8-2115, 12-4205, 12-4206, 12-4211, 12-4301, 12-4306, 12-4406.

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Dear Mr. Osborn:

As prosecutor for the Municipal Court of Bonner Springs, Kansas, you request our opinion on a question concerning the conse-

quences of a person's failure to appear following the issuance of a complaint alleging a violation of a municipal traffic ordinance. Specifically, you inquire whether the failure of a driver to comply with a notice to appear can result in proceedings to suspend the person's driver's license and, if so, at what point the municipal court is required to notify the division of motor vehicles of the failure to appear.

At the outset, it is important to note that the Kansas statutes contain two separate sets of procedures to be used when violations of traffic rules take place. One is found in the Uniform Act Regulating Traffic at K.S.A. 8-2101 et seq., and applies to violations which occur on the highways of this state. The second appears at the Code of Procedure for Municipal Courts at Articles 42, 23 and 44 of Chapter 12 of the Kansas Statutes Annotated. These statutes deal with violations of municipal traffic ordinances, and are complete in and of themselves. City of Junction City v. Griffin, 227 Kan. 332 (1980). While certain statutes contained in the Uniform Act specifically reference municipal courts, such as K.S.A. 8-2115 (municipal courts must provide records of convictions and bail or bond forfeitures to the division of motor vehicles), it is the Code, rather than the Uniform Act, which governs the procedure followed in municipal court for violations of municipal traffic ordinances.

Both the Code and the Uniform Act contain sections which authorize the issuance of a citation/complaint for traffic offenses, together with a notice to appear at a hearing set for a later date. K.S.A. 8-2106, 12-4205. By means of this procedure, it is unnecessary to take a person into custody or require the posting of a bond, although this may be done at the discretion of the officer. The Code and the Uniform Act differ, however, in the circumstances in which an arrest may be made, as opposed to the mere issuance of a citation/complaint. Under the Uniform Act, a person halted for a violation may, at the discretion of the officer, be either arrested or given a citation and notice to appear. K.S.A. 8-2105. Under the Code, issuance of a complaint and a notice to appear is required (K.S.A. 12-4211), unless a warrant has been issued for the person's arrest or, as provided by K.S.A. 12-4212(c):

"the law enforcement officer, having no warrant, detained such person pursuant to subsection (c) or (d) of K.S.A. 12-4211 and
(1) such person refuses to give a written promise to appear in court when served with a notice to appear, or (2) such person is unable to identify himself or herself to the reasonable satisfaction of the law enforcement of-

ficer, or (3) such person is not a resident of the state of Kansas or (4) the law enforcement officer has probable cause to believe that such person may cause injury to himself, herself or others or may damage property unless immediately arrested."

Once a complaint and notice to appear have been issued, the Code provides certain penalties in the event that the accused driver fails to appear. Following the issuance of a bench warrant pursuant to K.S.A. 12-4406(e), K.S.A. 12-4306 provides in pertinent part:

"(a) If a person who is a resident of this state is charged with a violation of a traffic ordinance of a city in this state and such person fails to appear after service of notice to appear, any law enforcement officer of any county or city of the state may serve the bench warrant issued for the person and may collect from the person a cash appearance bond in the amount stated in the warrant upon request of the law enforcement agency of the city in which the warrant was issued. In the event the violator waives actual in hand service of the bench warrant and the officer has verified by telecommunication that the bench warrant is in the actual possession of the law enforcement authorities of the jurisdiction issuing the same, the officer making the arrest may collect the appearance bond without actual in hand service of the bench warrant.

"(b) Any appearance bond collected pursuant to this section shall be forwarded forthwith to the clerk of the municipal court of the city in which the alleged violation was committed."

In lieu of the security provided for in subsection (a) (i.e. a cash appearance bond), the officer may require the person to deposit their driver's license with the municipal court. K.S.A. 12-4301(d). In the event that the person again fails to appear, the license is to be sent to the division of motor vehicles, which will institute suspension proceedings.

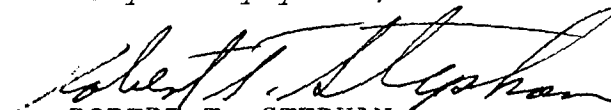
We would agree with your conclusion that the above represents the only procedure in the Code by which a person's license can be suspended by reason of their failure to appear following

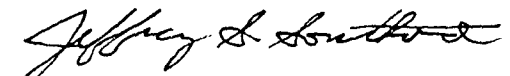
the issuance of a complaint and notice to appear. While K.S.A. 8-2110 sets forth a procedure for suspension in the event a driver fails to appear following the issuance of a citation under the Uniform Act, in our opinion such requirements cannot be read into the Code, which is an entirely different act. While this is not to say that such a requirement could not be added by legislative amendment to the Code, or, alternatively, reference made to municipal courts in K.S.A. 8-2110, we are not prepared to read in by inference that which is not contained in the statutes.

As noted above, in some cases the Uniform Act includes municipal courts in its provisions. For example, K.S.A. 8-2115 provides that municipal courts are required to send abstracts of conviction or the forfeiture of bond or bail to the division of motor vehicles. At present, however, a failure to appear under the Code only subjects an individual to the penalties provided by the Code in K.S.A. 12-4306 and 12-4301, and those penalties do not include automatic suspension proceedings of the kind found in K.S.A. 8-2110.

In conclusion, a person who is stopped for a violation of a municipal traffic ordinance may be issued a complaint and notice to appear pursuant to K.S.A. 12-4205. The notice to appear, which is signed by the person who is detained, constitutes a promise to attend a specified municipal court hearing, and may be enforced through the issuance of a warrant if no appearance is made. K.S.A. 12-4306 provides that such a warrant may be enforced by any law enforcement officer in the state through the collection of a cash appearance bond. However, unlike a similar provision in the Uniform Act Regulating Traffic (K.S.A. 8-2110), K.S.A. 12-4306 contains no provision that a person's non-appearance also subjects him or her to driver's license suspension proceedings. Accordingly, a municipal court is required to notify the division of motor vehicles of its proceedings only as provided by K.S.A. 8-2115.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Assistant Attorney General