



STATE OF KANSAS

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June 19, 1985

ATTORNEY GENERAL OPINION NO. 85-67

Charles D. Clinker  
Chief of Police  
Goodland Police Department  
204 West 11th  
Goodland, Kansas 67735

Re: Cities and Municipalities -- Municipal Courts;  
Prosecution and Arrest -- Complaint; Issuance  
and Service

Synopsis: A complaint which alleges a violation of a city traffic ordinance is not effective until filed with the municipal court, and may be served upon the accused person either before or after being filed. K.S.A. 12-4201, 12-4203. If the complaint is filed initially with the court, a notice to appear shall be issued by the city attorney and may be served pursuant to K.S.A. 12-4207 by either personal service on the accused person, by leaving it at the person's residence, or by mailing it to the person's last known address. Cited herein: K.S.A. 12-4201; 12-4202; 12-4203; 12-4204; 12-4205; 12-4207.

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Dear Chief Clinker:

As Chief of Police of the City of Goodland, you request our opinion on a question concerning the procedure which may be followed in cases where an officer observes a violation of the traffic ordinances of Goodland, but is unable for some reason (i.e. responding to another call) to halt the driver immediately and issue a complaint and notice to appear.

Assuming the officer is able to identify the driver, you inquire whether service may be subsequently made by mail.

Issuance of complaints for violations of the traffic ordinances of the City of Goodland is governed by the Code of Procedure for Municipal Courts, K.S.A. 12-4101 et. seq. Prosecution for a violation, whether a traffic infraction or a misdemeanor, is commenced through the filing of a complaint with the municipal court. K.S.A. 12-4201. Generally, the complaint is issued to the driver of the vehicle upon being halted by the officer witnessing the violation, together with a notice to appear before the municipal court at a subsequent date. K.S.A. 12-4202, 12-4205. If this procedure is used, the complaint is signed by the officer (K.S.A. 12-4205) and then filed with the municipal court. K.S.A. 12-4203.

However, an examination of the statutes indicates that a second, alternative procedure may be used. K.S.A. 12-4203 states in pertinent part:

"A copy of the complaint shall be served, together with a notice to appear or a warrant, by a law enforcement officer upon the accused person, and forthwith, the complaint shall be filed with the municipal court, except that a complaint may be filed initially with the municipal court, and if so filed, a copy of the complaint shall forthwith be delivered to the city attorney. The city attorney shall cause a notice to appear to be issued, unless he or she has good reason to believe that the accused person will not appear in response to a notice to appear, in which case the city attorney may request that a warrant be issued." (Emphasis added.)

If such a procedure is used, the officer is required to swear to the violation or violations, using the form set out at K.S.A. 12-4202, or one in substantial compliance. A notice to appear is then issued by the city attorney, as noted in the underscored language above. K.S.A. 12-4204 sets out a form which may be employed for such notices.

Once such a notice to appear has been issued, it may be served upon the accused person by a variety of means which are enumerated at K.S.A. 12-4207, which states as follows:

"The notice to appear shall be served upon the accused person by delivering a copy to him or her personally, or by leaving it at the dwelling house of the accused person or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the last known address of said person. A notice to appear may be served by any law enforcement officer within the state and, if mailed, shall be mailed by a law enforcement officer of the municipality of its issuance or the clerk of the municipal court. Upon service by mail, the law enforcement officer shall execute a verification to be filed with a copy of the notice to appear."

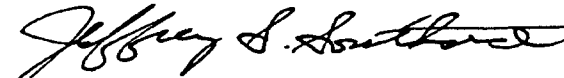
Accordingly, it is our opinion that, if the above steps are followed, a traffic violation which is witnessed by an officer may be made the subject of a complaint which is subsequently filed with the court, with service made by mail on the driver accused of the violation.

In conclusion, a complaint which alleges a violation of a city traffic ordinance is not effective until filed with the municipal court, and may be served upon the accused person either before or after being filed. K.S.A. 12-4201, 12-4203. If the complaint is filed initially with the court, a notice to appear shall be issued by the city attorney and may be served pursuant to K.S.A. 12-4207 by either personal service on the accused person, by leaving it at the person's residence, or by mailing it to the person's last known address.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General



Jeffrey S. Southard  
Deputy Attorney General