



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

November 20, 1986

ATTORNEY GENERAL OPINION NO. 86- 161

Judd Dent
City Attorney
City of Independence
Suite 202, Professional Building
P.O. Box 396
Independence, Kansas 67301

Re: Criminal Procedure -- Preliminary Proceedings --
Service of Warrants

Synopsis: Any law enforcement officer may execute an
arrest warrant within the officer's
jurisdictions. CITED HEREIN: K.S.A. 19-812a;
K.S.A. 1985 Supp. 22-2202, as amended by L. 1986,
ch. 133, 150; K.S.A. 22-2305; K.S.A. 1985 Supp.
22-2401a.

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Dear Mr. Dent:

As City Attorney for the City of Independence, Kansas, you
have requested our opinion regarding whether a city police
officer has the authority to execute an arrest warrant, or
whether that is an exclusive power of the Sheriff of
Montgomery County.

K.S.A. 1985 Supp. 22-2401a(2) provides:

"Law enforcement officers employed by any city
may exercise their powers as law enforcement
officers:

"(a) anywhere within the city limits of the city employing them and outside of such city when on property owned or under the control of such city;"

A law enforcement officer is defined by K.S.A. 1985 Supp. 22-2202, as amended by L. 1986, ch. 133, 150 thus:

"'Law enforcement officer' means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof. . . ."

Subsection 20 of the same enactment defines warrant as follows:

"'Warrant' means a written order made by a magistrate directed to any law enforcement officer commanding such officer to arrest the person named or described therein in the warrant."

K.S.A. 22-2305(1) provides for execution or service of warrants and provides:

"The warrant shall be executed by a law enforcement officer." (Emphasis added.)

By definition, a police officer is a law enforcement official, and as such, is empowered to execute warrants pursuant to K.S.A. 22-2305(1).

However, K.S.A. 19-812a provides:

"The sheriff of Montgomery county, Kansas, either by himself or deputy, shall attend all terms of the district court held in Montgomery county, Kansas, and shall serve all process, execute all orders issued therefrom, returning the same to the place from which they were issued."

Thus, the issue to be resolved is which statute controls.

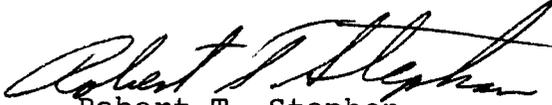
In State v. Hennessee, 232 Kan. 807 (1983), the Kansas Supreme Court determined:

"[W]here there is a conflict between two statutes the latest legislative expression controls. Farmers State Bank & Trust Co. of Hays v. City of Yates Center, 229 Kan. 330, 338, 624 P.2d 971 (1981)." 232 Kan. at 808, 809.

K.S.A. 19-812a was enacted in 1927 by the Legislature.
K.S.A. 22-2202, as amended, was amended in 1986. K.S.A. 22-2305(1) was enacted in 1970.

Since K.S.A. 19-812 was enacted much earlier than the other cited statutes, it has been superseded by the later statutes. Therefore, the Sheriff of Montgomery County and his deputies, and all city police officers are empowered to execute arrest warrants within their respective jurisdictions.

Very truly yours,


Robert T. Stephan
Attorney General


Brenda L. Braden
Deputy Attorney General

RTS:BLB:may