



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 18, 1986

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

ATTORNEY GENERAL OPINION 86- 175

Mr. Keith Hoffman
Dickinson County Attorney
325 N. Broadway
Abilene, Kansas 67410

Re: Criminal Procedure -- Code; Trials and Incidents
Thereto -- Grant of Immunity by County or
District Attorney

Synopsis: Immunity granted by a county attorney pursuant to
a plea bargaining agreement is not necessarily
binding on another county attorney. Evidence
independent of that testified to by the defendant
may be used by another county attorney in a
prosecution of the defendant. CITED HEREIN:
K.S.A. 1985 Supp. 19-702; K.S.A. 22-3415.

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Dear Mr. Hoffman:

As County Attorney for Dickinson County, you request our
opinion concerning granting of immunity from prosecution.
Specifically the problem you present concerns whether the
grant of immunity from prosecution for any crime occurring
within the State by one county attorney can effectively
prevent another county attorney from prosecuting an
individual for crimes committed in that county.

We note that the grant of immunity in question reads in
part:

"County Attorney _____ on behalf of the State
of Kansas grants to (the defendant) immunity from
prosecution and punishment as to any
transactions, matter, crime, allegation,

violation of Kansas law committed by (the defendant) in the State of Kansas for exchanges of his testimony regarding any transactions, matter, crime, allegation, violation of Kansas law committed by (the defendant) in the State of Kansas that he may have knowledge of."

K.S.A. 22-3415 states in pertinent part:

"The county or district attorney or the attorney general may at any time, on behalf of the state, grant in writing to any person immunity from prosecution or punishment on account of any transaction or matter contained in any statement or about which such person shall be compelled to testify and such statement or testimony shall not be used against such person in any prosecution for a crime."

The other pertinent statutory section is K.S.A. 19-702 which reads in part:

Except as otherwise provided in this section, it shall be the duty of the county attorney to appear in any court having jurisdiction within the county and prosecute or defend on behalf of the people all actions and proceedings, civil or criminal, in which the state or county is a party or interested." (Emphasis added.)

The jurisdiction of the powers of a county attorney are set forth generally in 63A Am Jur.2d, Prosecuting attorneys, §20.

"The powers and duties of the prosecuting attorney are ordinarily confined to his county or district, in the absence of any statute extending his territorial jurisdiction."

The case law in Kansas supports this proposition. The Supreme Court has stated that:

"A county attorney of one county cannot institute an action in the nature of a public prosecution in the name of a state in another county than his own without the consent and against the objection of the attorney general."

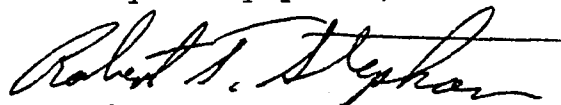
The State, ex rel. v. Labette County, 114 Kan. 726, 728 (1923). See also State, ex rel. v. Wyandotte County Commissioners, 140 Kan. 744 (1934); Martin, Governor v. The State, ex rel., 39 Kan. 576 (1888).

We are of the opinion that a county attorney's grant of immunity can only bind another county attorney in very limited circumstances. By the explicit terms of the immunity statute, the "statement or testimony shall not be used against such person in any prosecution for a crime." Therefore, if a person implicates himself in a crime in another county while testifying under immunity, that statement cannot be used in a prosecution in the other county. This does not mean that prosecution is completely precluded. If the second county has evidence, independent of the statement, nothing precludes a prosecution.

We reach this conclusion based on the explicit terms of the immunity statute, as well as the geographic boundaries of a county attorney's powers. A county attorney only has powers and duties limited to the county lines. Therefore, the grant of immunity can go no further than any other power of the county attorney.

In conclusion, we are of the opinion that a county or district attorney in one county is not precluded from prosecuting an individual, by a plea bargain agreement in another county providing there is evidence independent of the statement given under immunity and there is no problem created by unfulfillable promises in the plea arrangement.

Very truly yours,



Robert T. Stephan
Attorney General



Brenda L. Braden
Deputy Attorney General