



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 16, 1987

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 87- 105

Ted D. Ayres
General Counsel
Kansas Board of Regents
Suite 609, Capitol Tower
400 S.W. Eighth
Topeka, Kansas 66603-3911

Re: Probate Code--Care and Treatment for Mentally Ill
Persons--Emergency Detention; Authority of
University Police Officers

Synopsis: Although university police officers are considered
law enforcement officers for many purposes, they
are not included in the definition of law
enforcement officers found in K.S.A. 1986 Supp.
59-2902(f). Therefore, they possess no law
enforcement powers for purposes of taking mentally
ill persons into custody without a warrant pursuant
to Article 29, Care and Treatment for Mentally Ill
Persons. Cited herein: K.S.A. 1986 Supp. 22-2202;
22-2401a; 59-2902; 59-2908; K.S.A. 76-726.

* * *

Dear Mr. Ayres:

As General Counsel of the Kansas Board of Regents, you request
our opinion as to whether university police officers are
classified as law enforcement officers for purposes of Article
29, Care and Treatment for Mentally Ill Persons.

University police officers derive their jurisdiction and
authority from K.S.A. 76-726, which provides in part:

"The chief executive officer of any state educational institution may employ university police officers to aid and supplement state and local law enforcement agencies. . . . When there is reason to believe that a violation of state law, a county resolution, or a city ordinance has occurred on property described in provisions (1) or (2), such officers, with appropriate notification of, and coordination with, local law enforcement agencies, may investigate and arrest persons for such a violation anywhere within the city where such property, streets and highways are located. . . ."

Chapter 22, the Kansas Code of Criminal Procedure, also contains specific statutes dealing with law enforcement officers and university police officers. K.S.A. 1986 Supp. 22-2202(13) defines law enforcement officer as "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 laws of the State of Kansas or ordinances of any municipality thereof. . . ." This particular definition of law enforcement officer is general rather than listing specific types of law enforcement officers and would seem to include university police officers whose employment at state educational institutions is authorized by K.S.A. 76-726.

The issue of jurisdiction of university police officers is also addressed in K.S.A. 1986 Supp. 22-2401a(3), which contains provisions similar to those set out in K.S.A. 76-726. However, K.S.A. 1986 Supp. 22-2401a(6), for purposes of that section, sets out separate definitions for what is a "law enforcement officer" and for what is a "university police officer." K.S.A. 1986 Supp. 22-2401a(6)(a) states that "law enforcement officer" has the same meaning as ascribed thereto in K.S.A. 1986 Supp. 22-2202(13). K.S.A. 1986 Supp. 22-2401a(6)(b), on the other hand, states that "university police officers" means officers employed by the chief executive officer of any state educational institution under the control and supervision of the state board of regents. The fact that K.S.A. 1986 Supp. 22-2401a(6) specifically distinguishes "university police officers" from "law enforcement officers," indicates that the two terms are not always synonymous.

"Law enforcement officers" are given the authority to take a person into custody for the purpose of involuntary commitment as a mentally ill person. This authority is set out in K.S.A. 1986 Supp. 59-2908(a), which provides in part:

"Any law enforcement officer who has reasonable belief upon observation that any person is a mentally ill person and because of such person's illness is likely to cause harm to self or others if allowed to remain at liberty may take the person into custody without a warrant. . . ."
(Emphasis added.)

Article 29, Care and Treatment for Mentally Ill Persons, contains a definition of the term "law enforcement officer" for purposes of that act. K.S.A. 1986 Supp. 59-2902(f) provides:


"'Law enforcement officer' means any sheriff, regularly employed deputy sheriff, state highway patrol officer, regularly employed city police officer or a law enforcement officer of any county law enforcement department."

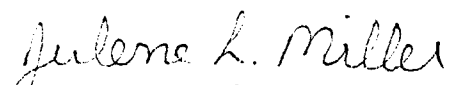
A plain reading of this statute does not appear to allow for the inclusion of university police officers as "law enforcement officers" for purposes of Article 29. The definition is specific rather than giving just a general description of law enforcement officers. So, although university police officers are considered law enforcement officers in many instances, they are not for purposes of Article 29.

In summary, K.S.A. 1986 Supp. 59-2902(f) sets forth a detailed and specific list of who qualifies as a "law enforcement officer" for purposes of Article 29. That list simply does not include "university police officers." This omission of "university police officers" from the definition of a "law enforcement officer," coupled with the treatment these terms are given in other statutes, leads to the conclusion that

university police officers are not authorized to act as law enforcement officers under Article 29, Care and Treatment for Mentally Ill Persons.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

RTS:JLM:jm