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ATTORNEY GENERAL OPINION NO. 91-102

The Honorable Sheila Hochhauser
State Representative, Sixty-Seventh District
1636 Leavenworth
Manhattan, Kansas 66502

Re: State Institutions and Agencies; Historical
Property--State Educational Institutions;
Management and Operation--University Police
Officers; Power and Authority; Jurisdiction

Synopsis: If a university police officer views the commission of a crime in his territorial jurisdiction, he may pursue the suspect and cite or arrest him without a warrant outside of the officer's jurisdiction pursuant to his fresh pursuit authority. The officer may not, however, use his law enforcement powers to effect a warrantless arrest of the suspect for a crime viewed outside the officer's territorial jurisdiction, even if viewed after or during a lawful fresh pursuit stop. In such cases, the officer may make a citizen's arrest. Cited herein: K.S.A. 1990 Supp. 8-2104; 8-2106; K.S.A. 21-3105; 22-2401; 22-2401a; 22-2403; 76-726.

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Dear Representative Hochhauser:

You ask us to clarify and expand upon the conclusions reached in Attorney General Opinion No. 91-96 by addressing the following:

"1. In the first situation, the Kansas State University Police officer pursues a suspect whom he reasonably believes has violated the law by committing a simple traffic offense in the jurisdiction of Kansas State University as that person drives into the city of Manhattan. The Kansas State University Police officer then arrests that person outside the jurisdiction of Kansas State University for violation of the simple traffic offense committed within the jurisdiction of Kansas State University. In this situation, does the Kansas State University Police officer have the authority to pursue a suspect whom he reasonably believes has violated the law, from the jurisdiction of Kansas State University into the city of Manhattan and then arrest the suspect anywhere within the confines of the city?

"2. The second situation involves a Kansas State University Police officer who reasonably believes a suspect has violated a simple traffic offense within the jurisdiction of Kansas State University and who then is in hot pursuit of that suspect outside the jurisdiction of Kansas State University. Once outside the jurisdiction of Kansas State University the suspect exhibits behavior leading the officer to reasonably believe that the suspect is driving under the influence of alcohol. This reasonable belief may be based upon further observation of the suspect's driving or upon an actual sobriety test administered in the field by the Kansas State University police officer outside the confines of the campus or immediately adjacent property of Kansas State University. In this situation the KSU police officer then arrests the suspect for driving under the influence, although he originally reasonably believed that the suspect had committed only a simple traffic offense and he pursued the suspect and was in fresh pursuit on that basis. Given these facts and circumstances, does a Kansas State University police officer have the authority to pursue the suspect from the jurisdiction of Kansas State University into the city of Manhattan and arrest the suspect anywhere within the confines of the city."

As a general rule, the powers of law enforcement officers are "limited to the territory of which they are officers, and any powers beyond such limits must be by reason of a grant thereof." Torson v. Baehni, 134 Kan. 188, 190 (1931). K.S.A. 76-726 and 22-2401a constitute grants of extra-territorial powers in limited situations. In Attorney General Opinion No. 91-96 we concluded that these statutes authorize a university police officer to exercise his official powers outside his normal territorial jurisdiction in three instances: (1) when in fresh pursuit as defined by K.S.A.

22-2401a(6)(c); (2) if the officer has reason to believe a law was violated within his territorial jurisdiction, the officer may investigate and arrest persons for such violations anywhere in the city where his territory is located if such efforts are made pursuant to appropriate notification of, and coordination with local law enforcement agencies; and (3) when a request for his assistance has been made by law enforcement officers from the area for which assistance is requested.

In our opinion, the first situation you describe falls squarely within the university police officer's power of fresh pursuit. Traffic offenses are considered crimes in this state. K.S.A. 21-3105. Therefore, a university police officer who views a traffic offense within his jurisdiction may pursue the suspect outside his jurisdiction. We should note, however, that warrantless arrests cannot be made for mere traffic infractions. K.S.A. 22-2401(d); K.S.A. 1990 Supp. 8-2104(c). The officer may, however, issue citations for such offenses. K.S.A. 1990 Supp. 8-2106(a)(1).

In the second situation you describe, the officer arrests the suspect for something other than the offense for which the suspect was pursued. When an officer is acting within the boundaries of his territorial jurisdiction, he is authorized to effect a warrantless arrest of a suspect for a crime (other than a traffic infraction) committed in the officer's view. K.S.A. 2401(d). In the situation you have described, the officer does not view the DUI until outside his territorial jurisdiction. [A crime is not committed in an officer's presence if the officer is unaware of its commission. 6A C.J.S. Arrest § 18 (1975).] There is no exception to his jurisdictional limits in K.S.A. 76-726 or 22-2401a for crimes committed in his view. Thus, in our opinion the officer cannot exercise his law enforcement powers in making a warrantless arrest in this situation. [We note that a similar situation was before the Kansas Supreme Court in City of Junction City v. Riley, 240 Kan. 614 (1987). The defendant in that case did not raise, and the court did not address, the question of whether a warrantless arrest for an offense viewed outside the officer's territorial jurisdiction was lawful.] However, if the stop is lawful (in fresh pursuit of a traffic offense committed in the officer's jurisdiction), the officer may make a citizen's arrest for a crime (other than a traffic infraction) committed in his view outside his jurisdiction. K.S.A. 22-2403(2). See also State v. Shienle, 218 Kan. 637 (1976); State v. Phoenix, 428 So.2d 262 (Fla. 1982) (law enforcement officers could make

"citizen's arrests" even though in uniform and marked police car).

In conclusion, if a university police officer views the commission of a crime in his territorial jurisdiction, he may pursue the suspect and cite or arrest him without a warrant outside of the officer's jurisdiction pursuant to the officer's fresh pursuit authority. The officer may not, however, use his law enforcement powers to effect a warrant less arrest of the suspect for a crime viewed outside the officer's territorial jurisdiction, even if viewed after or during a lawful fresh pursuit stop. In such cases, the officer may make a citizen's arrest.

Very truly yours,



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RTS:JLM:jm