

STATE OF KANSAS

OFFICE OF THE ATTORNEY
2ND FLOOR, KANSAS JUDICIAL CENTER.

ROBERT T. STEPHAN
ATTORNEY GENERAL

June 30, 1992

See 92-83A



ATTORNEY GENERAL OPINION NO. 92- 83

Steven W. Hirsch
Decatur County Attorney
P.O. Box 296
Oberlin, Kansas 67749

Re: Procedure, Civil -- Process -- Summons by Certified
Mail

Synopsis: The sheriff of the county where the documents are to be served shall be responsible for the service of process by certified mail. While postage costs might initially be incurred by the county, K.S.A. 1991 Supp. 60-2003(6) and K.S.A. 1991 Supp. 28-110 permit service costs to be taxed against and collected from the parties or attorneys utilizing the sheriff's office to effectuate such service. Cited herein: K.S.A. 19-812; K.S.A. 1991 Supp. 28-110; 60-303; 60-2003.

* * *

Dear Mr. Hirsch:

As Decatur county attorney, you request our opinion as to whether the sheriff of the county where the documents are to be served or the sheriff of the county from which the documents are sent is responsible for service by certified mail.

The relevant part of K.S.A. 1991 Supp. 60-303(b) which outlines the procedure for service of process by certified mail states:

"Except if the attorney for the party or the party, if the party is not represented by an attorney, requests personal or residence service pursuant to subsection (c); if the attorney or the party requesting service elects to serve process by certified mail pursuant to this subsection; as provided in K.S.A. 60-903, 60-906 or 60-3104, and amendments thereto; or as otherwise provided by law, the sheriff shall serve any process by certified mail, evidenced by return receipt signed by any person or by restricted delivery, unless otherwise permitted by this article. The sheriff, attorney for the party seeking service or the party, if the party is not represented by an attorney, shall cause a copy of the process and petition or other document to be placed in an envelope addressed to the person to be served in accordance with K.S.A. 60-304, and amendments thereto, adequate postage to be affixed and the sealed envelope to be placed in the United States mail as certified mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered." (Emphasis added).

The question you raise is based on the fact that the statute is unclear as to which county sheriff is responsible for serving process by certified mail. K.S.A. 19-812, which authorizes the sheriff or undersheriff or deputy to serve process issued and delivered, "places no limitations upon the territory in which a sheriff may operate." However, the territorial exercise of power that law enforcement officials may use has been restricted to their own county for the purposes of criminal cases except in the case of fresh pursuit or when a request for assistance has been made from officers of the other jurisdiction. State v. Hennessee, 232 Kan. 807, 808 (1983).

The testimony surrounding K.S.A. 60-303(6) focuses on the reduction of time that county sheriff departments would need to spend if certified mail was an acceptable way to serve a person. Minutes, Senate Committee on Judiciary, March 22, 1990. Therefore, based on the strict interpretation the court

gives regarding the necessity of proper service and the fact that if the purpose of enacting a statute authorizing the use of certified mail as a mode of service was to relieve the county sheriff's department of some of the duties as process server, it is logical to contend that the legislature intended to relieve those who previous to the enactment of this statute had the duty of personal service, i.e. the sheriff of the county where the process is to be served. In deciding this opinion we have looked at the "purposes to be accomplished, and the effect the statute may have under various constructions suggested." Workers Compensation Fund v. Silicone Distributing, Inc., 248 Kan. 551, 556 (1991).

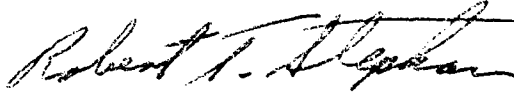
We agree with Professor Casad's following comments on this section:

"Why an attorney or party would want to have the sheriff rather than an employee of the law firm take the process to the post office and mail it is far from clear. If the attorney does it, he or she can be assured that the proper steps are taken and that the mail was properly addressed. That control is lacking if the task is turned over to the sheriff. It will make no difference to the defendant if a uniformed sheriff or deputy rather than a law clerk takes the process to the post office. In either case, it is the uniformed postman that actually makes the delivery of the process to the defendant. Accordingly, it seems highly unlikely that the option of having the sheriff mail the process, added to the Judicial Council's proposed bill with such confusing effect, will be used very much in practice." Casad, "Service of Process by Certified Mail", 59 J.B.K.A. 25 (1990).

In your letter you also state that one seeking service by certified mail refuses to advance postage costs to the sheriff's department. Attorney General Opinion No. 91-10 addressed a similar issue involving service of process by certified mail and concluded that "while postage costs might initially be incurred by a county, K.S.A. [1991] Supp. 28-110 permits service costs to be taxed against and collected from parties or attorneys utilizing a county sheriff to effectuate such service."

In conclusion, the sheriff of the county where the documents are to be served shall be responsible for the service of process by certified mail. However, while postage costs might initially be incurred by a county, K.S.A. 1991 Supp. 60-2003(6) and K.S.A. 1991 Supp. 28-110 permit service costs to be taxed against and collected from the parties or attorneys utilizing a county sheriff to effectuate such service.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelman
Assistant Attorney General

RTS:JLM:MJS:bas