



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

August 27, 1975

ATTORNEY GENERAL OPINION NO. 75- 341

Mr. Robert A. Bloomer
Assistant City Attorney of Downs
202 West Main Street
Osborne, Kansas 67473

Re: Municipal Courts--Change of Venue--Power to Grant

Synopsis: Municipal Courts do not possess the power to grant
a change of venue.

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Dear Mr. Bloomer:

You have requested our opinion as to whether a municipal court has the power to grant a change of venue. The following is in response.

K.S.A. 1974 Supp. 12-4101 *et seq.* governs the procedure in municipal courts in this jurisdiction. K.S.A. 1974 Supp. 12-4103 provides thus:

"This code is intended to provide for the just determination of every proceeding for violation of city ordinances. Its provisions shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. If no procedure is provided by this code, the court shall proceed in any lawful manner consistent with any applicable law and not inconsistent with this code."

The jurisdiction of municipal courts is prescribed by K.S.A. 1974 Supp 12-4104:

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"The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city. Search warrants shall not issue out of a municipal court."

In conjunction with the above the following statement is instructive:

". . . While jurisdiction is the power and authority of the court to act, venue is the place where the power to adjudicate is to be exercised, that is, the place where the suit may be or should be heard. The requirements of jurisdiction are grounded in the state's inherent judicial power while requirements of venue are grounded in convenience to litigants. Venue is not a jurisdictional question but a procedural one. While jurisdiction can neither be conferred nor waived by the parties, venue can be waived;" 77 Am.Jur.2d, *Venue*, Sec. 1, p. 832.

The provisions of K.S.A. 1974 Supp. 12-4101 *et seq.* establish uniform guidelines and procedures to be followed by municipal courts. K.S.A. 1974 Supp. 12-4104 delineates the legislative authorization and grant of jurisdiction and provides that the municipal court of any municipality is empowered to hear and determine matters arising out of violations of that city's ordinances. No other jurisdiction is provided. The requirement of jurisdiction is fundamental to the issue raised here. Without jurisdiction a court has no power to hear and determine a matter and any attempt to do so would have no legal force and effect. The jurisdiction to hear and determine a matter arising out of a violation of a city ordinance of a given city lies only in the municipal court sitting in that municipality. Therefore, no other municipal court possesses the requisite jurisdiction to hear and determine the cause. As a result it would necessarily follow that as to municipal courts venue and jurisdiction are concurrent; the place where the power to adjudicate is to be exercised lies in the only court with jurisdiction, the particular municipal court involved. Even if the parties agreed that some other municipal court was a more desirable forum to hear and cause it would not suffice to provide the other forum with the jurisdiction to hear and decide the matter. The provisions of K.S.A. 1974 Supp. 12-4108

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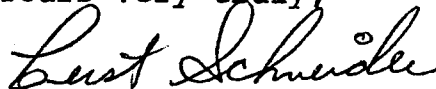
do not negate the above. That section specifically states that the Kansas code of criminal procedure should govern only "insofar as applicable." For the reason set out above the code provisions as to motions for change of venue have no applicability.

In addition to the above, the weight of authority is to the effect that "the right to change the venue of an action is purely statutory and unknown to the common law, and, hence, that the basis for the right must be found in the statutes . . ." 92 C.J.S., *Venue* § 127, p. 823. Inasmuch as the legislature has provided for the creation of municipal courts without establishing the right to a change of venue it must be concluded that the right to a change of venue does not inure to the parties in municipal courts.

Finally, it is instructive to note that K.S.A. 1974 Supp. 12-4101 provides, by implication, for the disqualification of a municipal judge and the appointment of a judge pro tem to hear the case. In cases where prejudice is present this provision should be utilized.

In conclusion, for the reasons set out above, a municipal court has no power or authority to grant a change of venue to another municipal court.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:MBR:JRM:kj