



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

September 26, 1975

ATTORNEY GENERAL OPINION NO. 75-378

Ms. Margaret W. Jordan
District Attorney
Tenth Judicial District
Johnson County Courthouse
Olathe, Kansas 66061

RE: Crimes and Punishments -- Identification and Detection
of Crimes and Criminals -- Duty of University of Kansas
to Assist Law Enforcement Officials.

Automobiles and Other Motor Vehicles -- Evidence of
Alcoholic Content of Blood of Operator -- Driver's
Consent to Blood Alcohol Test.

SYNOPSIS: A medical technician at the Kansas University Medical
Center may not be compelled by a law enforcement officer
to perform a blood alcohol test upon a suspect even
though the individual may have consented to the test.

Once arrested by Johnson County authorities, a suspect
remains in the legal and physical custody of law
enforcement officials despite his transfer to the
Kansas University Medical Center for treatment.

* * *

Dear Ms. Jordan:

In your letter to this office, you inquire whether K.S.A. 21-
2502 requires medical technicians of the University of Kansas
Medical Center (KUMC) to draw blood for a law enforcement officer
for the purpose of determining the alcohol content of a suspect's
blood. Although your request does not so state, additional inquiry
from our office revealed that your question presupposes that the
suspect has consented to the test. Secondly, you ask whether

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Johnson County authorities retain jurisdiction over the person of a suspect during his hospitalization at KUMC if they have previously established contact with him through an arrest or other legal means.

K.S.A. 21-2502 provides thus:

"It shall be the duty of the university of Kansas, the state board of health, and all other state departments and institutions, free of charge or reward, to cooperate with the law enforcement officers of the state, and with the coroners, and to render to them such service and assistance relative to microanalysis, handwriting, toxicology, chemistry, photography, medicine, ballistics and all other sciences and matters relating to or that would aid in controlling crime, disease and the detection, apprehension, identification and prosecution of criminals."

Although an analysis of the provisions of this statute alone would seem to require a KUMC technician to perform the test at the direction of an officer, an examination of K.S.A. 8-1001 et seq. leads to a contrary conclusion. These latter statutes specifically regulate the conditions under which blood alcohol tests may be administered, and significantly among them, K.S.A. 8-1003 provides as follows:

"Only a physician or qualified medical technician acting at the request of the arresting officer can withdraw any blood of any person submitting a chemical test under this act."

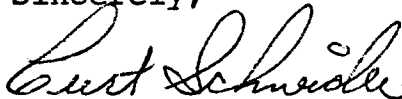
A prior opinion of this office (Op. Atty. Gen. No. 74-313) has held that this statute does not "compel an unwilling person to administer the test," noting the non-mandatory nature of the term "request." Although the opinion did not specifically discuss the relevance of K.S.A. 21-2502 to the issue at hand, it did note that a thorough analysis of other statutory law had been conducted, revealing no authority mandating the compulsory assistance of a technician in the test. This conclusion seems eminently correct since the provisions of K.S.A. 8-1001 et seq., dealing specifically with the subject of blood alcohol tests, must be deemed controlling over the more generalized terms of K.S.A. 21-2502 in accordance

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with recognized principles of statutory construction. Harris v. Shanahan, 192 Kan. 629, 390 P.2d 772 (1964). Thus, even accepting the premise that consent had been given prior to the test's administration, the result would not differ since the consent of the technician performing the test is also a prerequisite to its administration.

Additionally, you inquire whether Johnson County authorities, having once established control over a suspect by means of an arrest, retain jurisdiction over that person while he is hospitalized within KUMC. As we perceive your question, the answer is yes. The mere fact that a criminal suspect is transferred to the medical center does not automatically divest those authorities of jurisdiction over the person of the suspect. While the person is being cared for at the medical center, he or she may nonetheless remain in the legal and physical custody of the Sheriff of Johnson County.¹

Sincerely,



CURT T. SCHNEIDER
Attorney General

CTS:RMT:en

¹In answer to the specific hypothetical posed by your letter, the Johnson County coroner would possess authority to examine the body of a deceased who died during hospitalization at KUMC as long as the circumstances specified by K.S.A. 19-1031 et seq. were satisfied.