



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 14, 1976

ATTORNEY GENERAL OPINION NO. 76-156

Mr. Gary L. Nafziger
Jefferson County Attorney
Jefferson County Courthouse
Oskaloosa, Kansas 66066

Re: Criminal Procedure--Arrest--Law Enforcement
Officers

Synopsis: A marshal of a city of the third class is vested with law enforcement powers only within the territorial limits of the municipality which commissioned the officer and has no general police power to arrest throughout the state, except when and as those police powers are expressly extended in extraterritorial application by statute.

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Dear Mr. Nafziger:

You inquire concerning the authority of a municipal law enforcement officer, who is not a deputy sheriff of the county, to make arrests of individuals accused of the commission of crimes over which the municipality which commissioned the officer has no jurisdiction. Specifically, you advise that instances have occurred in which law enforcement officers who are marshals of cities of the third class have had occasion to make arrests for felonies on probable cause outside of the boundaries of the municipalities which commissioned the officers. The arrests in question were not made in hot pursuit.

Mr. Nafziger
Page Two
May 14, 1976

K.S.A. 22-2401 states in pertinent part thus:

"A law enforcement officer may arrest a person when:

(a) He has a warrant commanding that such person be arrested; or

(b) He has probable cause to believe that a warrant for the person's arrest has been issued in this state or in another jurisdiction for a felony committed therein; or

(c) He has probable cause to believe that the person is committing or has committed

(1) A felony;"

"The general doctrine is that the powers of 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, 5 P.2d 813 (1931); 5 Am.Jur.2d, Arrest § 50. The term "law enforcement officer" is defined by K.S.A. 22-2202(11):

"'Law enforcement officer' means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof."

K.S.A. 22-2202 must be viewed as prescribing the grounds and circumstances under which an officer may make an arrest within the jurisdiction of the governmental authority which has commissioned the person as a law enforcement officer. A marshal of a city of the third class, for example, enjoys no general police power throughout the state, but is vested with law enforcement powers within the territorial limits of the jurisdiction of the municipality, except when and as those police powers are expressly extended in extra-territorial application by statute.

A marshal of a city of the third class, therefore, has no general statewide police power whereby, travelling beyond the limits of jurisdiction of the municipality, he may make arrests of persons for whom no warrant has been issued, who are not the subject of hot pursuit, and who are proposed to be arrested only on probable cause that an offense has been

Mr. Nafziger
Page Three
May 14, 1976

committed in some jurisdiction of the state and that the
proposed accused has committed it.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Curt T. Schneider".

CURT T. SCHNEIDER
Attorney General

CTS/DLW/ksn