



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 6, 1976

ATTORNEY GENERAL OPINION NO. 76- 279

Mr. Jerry G. Larson
Pawnee County Attorney
Pawnee County Courthouse
Larned, Kansas 67550

Re: County Attorney--Duties--Mental Illness and Alcoholic
Poison

Synopsis: The county or district attorney must represent the otherwise unrepresented applicant in a mental illness proceeding under K.S.A. 1975 Supp. 59-2901 et seq., and in alcoholic treatment cases under K.S.A. 65-4001 et seq., whether the proceeding is filed initially in the jurisdiction of such county or district attorney, or is transferred there pursuant to a change of venue ordered by the transferor court.

* * *

Dear Mr. Larson:

In your capacity as Pawnee County Attorney you have requested my opinion as to your responsibilities and duties in representing applicants in mental illness and alcoholic treatment cases, where the venue has been changed to Pawnee County pursuant to K.S.A. 1975 Supp. 59-2922, as finally amended by Section 8 of Chapter 243 of the 1976 Session Laws and K.S.A. 65-4041, as amended by Section 273 of Chapter 145 of the 1976 Session Laws.

K.S.A. 1975 Supp. 59-2922, as finally amended, provides in pertinent part:

"After the application provided for in
K.S.A. 1975 Supp. 59-2913, as amended,

or 59-2923, as amended, is filed, the district court at any time, on its own motion or upon the written request of any person, may transfer the venue of any case to any of the following district courts under the following conditions:

(a) When the application is filed in the county of the residence of the patient,

(1) to the county where the patient is being detained in a treatment facility under the authority of an order issued pursuant to K.S.A. 1975 Supp. 59-2912, as amended, 59-2917, as amended, or 59-2918, as amended;

(2) to any other county designated by the court, if the patient has made a request for a change of venue and the court finds that the patient cannot obtain a fair hearing in the county of such patient's residence.

(b) When the application is filed in the county in the presence of the patient,

(1) to the county of the residence of the patient;

(2) to the county where the patient is being detained in a treatment facility under the authority of an order issued pursuant to K.S.A. 1975 Supp. 59-2912, as amended, 59-2917, as amended, or 59-2918, as amended;

(3) to any other county designated by the court, if the patient has made a request for a change of venue and the court finds that the patient cannot obtain a fair hearing in the county of such patient's presence.

. . . When any order changing venue is issued, the district court issuing such order shall transmit to the district court to which venue was changed a certified copy of all pleadings and orders in the case. The district court issuing such order shall transmit to the district court of the residence of the proposed patient a statement of all court costs incurred by the county of the district court issuing such order and a certified copy of all pleadings and orders in the case.

Any district court to which venue is transferred shall proceed in the case as if the application has been originally filed therein and shall cause notice of the change of venue to be given to the persons and in the manner provided for in K.S.A. 1975 Supp. 59-2916, as amended, except that the court need not issue the order for mental evaluation pursuant to section 15 of this act if such order has previously been issued."

[Emphasis supplied.]

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In cases involving the treatment of alcoholics, K.S.A. 65-4041, as amended, provides in nearly identical terms similar rules governing the change of venue. Relevant hereto, the statute provides:

"Any district court to which venue is transferred shall proceed in the case as if the application had been originally filed therein and shall cause notice of the change of venue to be given to the persons and in the manner provided for in K.S.A. 65-4035. The court need not issue the order for evaluation pursuant to K.S.A. 65-4033(F) if such order has previously been issued."

In addition, K.S.A. 1975 Supp. 59-2917, as finally amended by Section 77 of Chapter 242 of the 1976 Session Laws, provides in pertinent part:

"The applicant and the proposed patient shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. All persons not necessary for the conduct of the proceedings may be excluded. The hearings shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the proposed patient. The court shall receive all relevant and material evidence which may be offered, including the testimony or written findings and recommendations of the treatment facility or examiner who has examined or evaluated the proposed patient and the testimony and written findings and recommendation of the investigators appointed pursuant to subsection (b) of K.S.A. 1975 Supp. 59-2915, as amended. Such evidence shall not be privileged for the purpose of this hearing. If the applicant is not represented by counsel, the county attorney shall represent the applicant, prepare all necessary papers, appear at the hearing and present such evidence as she or he shall determine to be of aid to the court in determining whether the proposed patient is a mentally ill person."

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Here again, K.S.A. 65-4036 utilizes the exact same language to impose a similar duty on the county attorney in alcoholic and intoxication treatment cases.

The term "applicant" in both sets of the above statutes refers to the person filing a verified application pursuant to either K.S.A. 65-4032, as amended by Section 220 of Chapter 145 or K.S.A. 1975 Supp. 59-2913, as amended by Section 74 of Chapter 242, both in the 1976 Session Laws.

It should be noted that all of these statutory provisions are effective January 10, 1977. The Legislature extensively amended the statutes applicable to mental illness and alcoholic treatment case effective July 1, 1976. However, to reconcile the language of these statutes with the requirements of the Court Unification Act, the July 1 amendments had to be reamended and the term "district court" substituted for "probate court." Until January 10, 1977, the probate court will continue to be the court of proper jurisdiction for matters pertaining to mental illness and alcoholic treatment arising under these statutes.

Both K.S.A. 1975 Supp. 59-2917, as amended, and K.S.A. 65-4036, prescribe the procedure to be followed by both the court where the application is filed originally, and by the transferee court. The court where the application is filed initially is entitled to require the county attorney to represent the applicant if the applicant is not represented by counsel. The transferee court has the same right, and indeed responsibility, to proceed in all respects as the transferor court. Representation of the applicant by the county attorney is an integral and vital part of the procedure: the county attorney shall appear and "present such evidence as he shall determine to be of aid to the court in determining whether the proposed patient is an alcoholic or incapacitated by alcohol." I find no language in the act which suggests that the responsibility of the county attorney to represent the applicant in any given proceeding depends upon the jurisdiction of origin of the proceeding. The procedural rights of the applicant, and the responsibility of the court, remain unimpaired by a change of venue. The duty of the county attorney to represent the applicant in a proceeding where initially filed does not arise from any duty of the county attorney to conduct county business, i.e., business of the board of county commissioners or other county officers, but as a public obligation owed to the state. Similarly, the duty of the county attorney in the transferee county is a state-imposed obligation, which does not depend upon any relationship between the case, such as the residence of the applicant or proposed patient, and the county of the transferee court.

Accordingly, I must conclude that as county attorney, your duty to provide representation to the applicant in mental illness and

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alcoholic treatment cases under the respective acts is the same in proceedings which are transferred as a result of a change of venue to Pawnee County, as it is in proceedings which are initiated there.

Because of the presence of a treatment facility in your jurisdiction, you may be called upon to provide representation in an extraordinary number of cases, a burden not shared equally by other county attorneys. The resultant work is state-imposed, and it is incumbent, in my judgment, that the state take appropriate measures that county attorneys in such jurisdictions be adequately compensated for responding to this statutory duty. To do otherwise must necessarily result in exploitation of county attorneys in those jurisdictions which may eventually lead to impairment of the objectives of the act.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:jj