



STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

**Curt T. Schneider**  
Attorney General

June 14, 1977

ATTORNEY GENERAL OPINION NO. 77- 191

The Honorable Paul R. Hess  
State Senator, 30th District  
816 South Estelle  
Wichita, Kansas 67211

Re: Code of Procedure for Municipal Courts--Arrest--Warrants

Synopsis: K.S.A. 12-4209 requires that no warrant may be issued by a municipal court against persons who fail to appear in court as required in a notice to appear which was issued to such person charging a traffic violation unless the arrest warrant is supported by a complaint signed by the complaining officer or party under oath or affirmation.

\* \* \*

Dear Senator Hess:

You inquire whether an arrest warrant issued by a municipal court for persons who fail to appear in court in response to a notice to appear charged with a traffic violation, which is supported by an officer's complaint not under oath, is invalid.

K.S.A. 12-4209, which is part of the Kansas Code of Procedure for Municipal Courts, states:

"A warrant may be issued: (a) When an accused person fails to appear as required in a notice to appear after its service.

(b) In all other cases where a complaint has been filed and the municipal judge determines that a warrant should be issued.

No warrant shall issue unless the complaint giving rise to its issue is supported by oath or affirmation. [Emphasis supplied]

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The emphasized language in the above paragraph finds its basis in Article 15 of the Bill of Rights of the Constitution of the State of Kansas:

"The right of the people to be secure in their persons and property against unreasonable searches and seizures, shall be inviolate; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons or property to be seized."

The Kansas Supreme Court has held a sworn statement to be a constitutional prerequisite to a valid warrant. In State v. Boyle, 207 Kan. 833, 838; 486 P.2d. 849 (1971), the court held:

"It must be conceded that an arrest with or without a warrant must be founded upon more than mere suspicion. The language of the Fourth Amendment to the United States Constitution, that no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the persons or things to be seized applies to arrest as well as search warrants. (Giordenello v. United States, 357 U.S. 480, 2 L. Ed. 2d 1503, 78 S. Ct. 1245.)

In addition, the Kansas Supreme Court has often reiterated that the primary rule for the construction of a statute is to find the legislative intent from its language, and where the language used is plain, unambiguous and appropriate to the obvious purpose, the court should follow the intent as expressed by the words used and is not warranted in looking beyond them in search of some other legislative purpose or extending the meaning beyond the plain terms of the act. Hunter v. Haun, 210 Kan. 11, 499 P.2d 1087 (1972); Calloway v. City of Overland Park, 211 Kan. 646, 508 P.2d 902 (1973). Since the language of K.S.A. 12-4209 states in clear and unambiguous language that no arrest warrant shall be issued for failure to appear as required in a notice to appear, unless the complaint giving rise to its issue is supported by oath or affirmation, no other interpretation should be given to the statute.

K.S.A. 12-4113(k) defines notice to appear as:

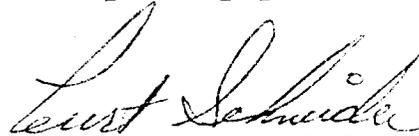
". . . a written notice to a person accused by a complaint of having violated an ordinance of a city to appear at a stated time and place to answer to the charge of the complaint."

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K.S.A. 12-4204 prescribes the form for a notice to appear but does not require that it be sworn under oath. K.S.A. 12-4206 directs that a notice to appear shall be used in all cases involving the violation of a municipal ordinance, except when a warrant is issued. Therefore, the complaint upon which the notice to appear was issued must be supported by oath or affirmation to be the basis of a legal warrant.

Accordingly, it is my opinion that the Kansas Constitution and K.S.A. 12-4209 require that no warrant may be issued by a municipal court against persons who fail to appear in court as required in a notice to appear which was issued to such person charging a traffic violation unless the arrest warrant is supported by a complaint signed by the complaining officer or party under oath or affirmation.

Very truly yours,

  
CURT T. SCHNEIDER  
Attorney General

CTS:DLW:kb