

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 31, 1978

ATTORNEY GENERAL OPINION NO. 78- 44

Mr. Dennis W. Moore
Johnson County District Attorney
Johnson County Courthouse
Post Office Box 728
Olathe, Kansas 66061

Re: Criminal Law--Arrest Warrants--Disclosure

Synopsis: A law enforcement officer may not contact certain defendants by telephone in order to inform them that a warrant is outstanding for their arrest. Such disclosures violate the prohibition of K.S.A. 21-3827.

* * *

Dear Dennis:

As Johnson County District Attorney, you request my opinion regarding the application of K.S.A. 21-3827. Specifically, you ask whether an authorized law enforcement officer may legally contact defendants by telephone in order to inform them that a warrant is outstanding for their arrest.

The question is raised in light of K.S.A. 21-3827, which states as follows:

"An unlawful disclosure of a warrant is revealing or making public in any way, not necessary for the execution of such warrant, the fact that a search warrant or warrant for arrest has been applied for or issued or the contents of the affidavit or testimony on which such

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warrant is based, prior to the execution thereof. An unlawful disclosure of a warrant is a class B misdemeanor."

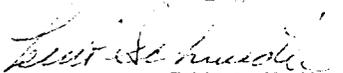
You advise that the Johnson County sheriff has indicated his view that the personal execution of arrest warrants in many instances, largely involving misdemeanor and lower-grade felony offenses, entails excessive demands upon the manpower of his office, and unnecessary expenses. He has proposed the institution of a procedure whereby, in appropriate cases, the subject would be notified by telephone of the existence of the warrant and asked to appear voluntarily. The question is raised whether such telephone notification would violate the cited provision.

The purpose of the provision, of course, is to prohibit any disclosure of the existence of a warrant which is "not necessary for the execution" thereof, thus avoiding instances in which the accused may learn of the outstanding warrant and take flight in order to avoid prosecution. However, in many instances involving misdemeanor and lesser felony charges, there is little likelihood that the accused will flee in order to avoid the charges.

Nonetheless, K.S.A. 21-3827 prohibits disclosure of the existence of a warrant in any way "not necessary for the execution" of the warrant. Under K.S.A. 22-2305, a warrant is executed by the arrest of the defendant. A telephone request to a defendant that he or she appear and surrender voluntarily may certainly be convenient, it is neither legally nor actually necessary to execution of the warrant, and the cited statute prohibits disclosure in any way which is "not necessary" for the execution of the warrant. In effect, this mandates that there be no disclosure of the existence of the warrant until the defendant is taken into custody.

I suggest that in those instances in which the defendant is deemed likely to appear upon request, that a summons be issued pursuant to K.S.A. 22-2392 and -2303 rather than a warrant. The issuance of a summons would in those instances relieve the sheriff of the necessity of dispatching officers to seek out those defendants who are deemed likely to respond voluntarily to a request to appear and surrender.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:BEW:jj