



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 19, 1978

ATTORNEY GENERAL OPINION NO. 78-200

Mr. Darrell E. Miller
Jewell County Attorney
Jewell County Courthouse
Mankato, Kansas 66956

Re: City Police Officer--Authority--Notice To Appear For
Traffic Violations

Synopsis: When a city has no municipal court and no city ordinances,
the city police officer may issue notices to appear in the
District Court for violation of state highway rules and
regulations.

* * *

Dear Mr. Miller:

You question the authority of a city police officer who is not a
deputy sheriff to issue a notice to appear in the district court
for a violation of the state highway laws.

The Kansas Code of Criminal Procedure, K.S.A. 22-2408(6) provides:

"The procedures prescribed by this section shall not apply to the detention or arrest of any person for the violation of any law regulating traffic on the highways of this state, and the provisions of K.S.A. 8-2104 to 8-2108 inclusive, and any acts amendatory thereof, and the code of procedure for municipal courts shall govern such procedures."

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As per this statute, it is K.S.A. 8-2104 to 8-2108 and the Code of Procedure for Municipal Courts that determine the authority of a city police officer to issue a citation for notice to appear in a district court.

However, under the Municipal Court Procedure, K.S.A. 12-4111,

"The governing body may employ law enforcement officers who shall have power to execute all process issued by any municipal judge within the state . . . The powers of law enforcement officers with respect to the Code of Criminal procedure shall not be reduced by this code."

From this it is apparent that one also must look to the Kansas Criminal Code when determining the power of law enforcement officers. K.S.A. 8-2106, Notice to Appear, is as follows:

"(a) Whenever a person is halted by a police officer for any violation of any of the laws of this state regulating traffic on highways punishable as a misdemeanor and is not taken before a magistrate as hereinbefore required or permitted, the officer shall prepare a written traffic citation containing a notice to appear in court, the name and address of the person, the state registration number of the person's vehicle, if any, the offense charged, the time and place when and where the person shall appear in court and such other pertinent information as may be necessary . . .

(c) The place specified in the notice to appear must be before a magistrate within the county in which the offense is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the alleged violation occurred."

[Emphasis supplied.]

Thus, a police officer may issue a citation to appear in court before a magistrate within the county in which the offense was committed.

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"Police officer" is defined by K.S.A. 8-1450 as "every law enforcement officer, as defined by K.S.A. 21-3110, authorized to direct or regulate traffic or to make arrests for violations of traffic regulations."

K.S.A. 21-3110(10) in turn defines law enforcement officer as:

"'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 crimes, whether that duty extends to all crimes or is limited to specific crimes."

Additionally, law enforcement officer has been defined in the Code of Procedure for Municipal Courts, K.S.A. 12-4113(j), as: ". . . any person who by virtue of office is vested by law with a duty to maintain public order and to make arrests for violations of the laws of the state of Kansas . . ." A city police officer thus appears to be within the meaning of police officer as provided in K.S.A. 8-2106.

K.S.A. 22-2202(12) defines "Magistrate" as:

"an officer having power to issue a warrant for the arrest of a person charged with a crime and includes:
(a) The justices of the supreme court.
(b) The judges of district court.
(c) Judges of courts exercising limited criminal jurisdiction under the laws of the state of Kansas."

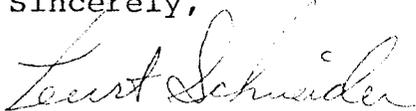
Application of this definition to K.S.A. 8-2106 allows a city police officer to prepare a traffic citation containing a notice to appear in court, with the place specified in the notice to appear before a district court judge within the county in which the offense was committed.

We conclude then, that where a city has no municipal court, the city police officer may issue a notice to appear in the district

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court for a violation of laws regulating traffic on highways of
this state.

Sincerely,

A handwritten signature in cursive script that reads "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:MGM:AFR:jj