



STATE OF KANSAS

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October 12, 1978

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ATTORNEY GENERAL OPINION NO. 78- 331

Mr. John S. Snyder
Director
Department of Safety
Fifth and Main
Osawatomie, Kansas 66064

Re: Municipal Courts--Bond--Driver's Licenses

Synopsis: K.S.A. 12-4301(d) allows a defendant charged with a violation of a municipal ordinance - traffic or nontraffic - to deposit his or her valid Kansas drivers license as security for the appearance bond. The municipal court must accept the driver's license if offered and may not insist upon a cash bond.

* * *

Dear Mr. Snyder:

You inquire concerning the posting of an appearance bond in municipal court cases. Specifically, you ask whether a municipal court may require a cash bond when a defendant charged with a nontraffic offense chooses to deposit his or her valid Kansas driver's license as security.

The relevant portion of K.S.A. 12-4301 is set forth below:

"(d) In lieu of giving security in the manner provided by subsection (a) [payment of cash], (b) and (c) above, the accused person may deposit with the arresting law enforcement officer or the clerk of the municipal court a valid license to operate a motor vehicle in the state of Kansas in exchange for a receipt therefor issued by the law enforcement officer or the clerk of

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the municipal court, the form of which shall be approved by the division of vehicles of the state department of revenue."

K.S.A. 12-4301(d) is part of the Code of Procedure for Municipal Courts, Article 41, Chapter 12. K.S.A. 12-4103 explains the intent: "The code is intended to provide for the just determination of every proceeding for violation of city ordinances." The code deals with all city ordinances - traffic or nontraffic. Article 43 of the Code detailing Appearance and Conditions of Release also deals with violations of city ordinances and does not make a distinction between conditions of release for traffic offenses and nontraffic offenses. Thus it appears that the choice given the defendant in K.S.A. 12-4301(d) applies to both traffic and nontraffic offenses.

Furthermore, K.S.A. 12-4103 states that

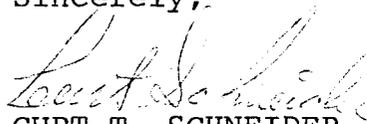
"[The Code] provisions shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."

In construing K.S.A. 12-4301(d) with these objectives in mind, I interpret the statute to mean the decision to deposit a drivers license as security is entirely that of the accused. Neither the law enforcement officer or the judge can deny that option.

The legislature specifically addresses the issue of bail and delineates several alternatives for securing appearance. The methods -- cash, surety bond, guaranteed arrest bond certificate, and drivers license -- are designed to facilitate release. It appears that the legislature intended to encourage release especially since violation of most municipal ordinances does not warrant jailing the accused until trial.

Accordingly, in my opinion, K.S.A. 12-4301(d) requires a municipal court to accept a valid Kansas driver's license when the accused chooses to deposit it in lieu of a cash bond.

Sincerely,


CURT T. SCHNEIDER
Attorney General

CTS:LCD:jj