



STATE OF KANSAS

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December 19, 1978

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ATTORNEY GENERAL OPINION NO. 78- 387

Honorable Vern Miller
Sedgwick County District Attorney
Sedgwick County Courthouse-Annex
535 North Main Street
Wichita, Kansas 67203

Re: Traffic Offenses--Procedure--Complaints

Synopsis: A citation properly issued pursuant to K.S.A. 1977 Supp. 8-2106, may serve as a legally sufficient complaint for violations of those statutes regulating traffic, including those not found in Kansas Statute Annotated, Chapter 8.

* * *

Dear Mr. Miller:

You inquire as to the legal sufficiency of a "notice to appear", issued by a police officer, pursuant to K.S.A. 1977 Supp. 8-2106, if used as a complaint in the prosecution of misdemeanor offenses regulating traffic which are not included in K.S.A. Chapter 8. You give an example of such an offense, K.S.A. 1977 Supp. 41-804, the transportation of liquor in open containers.

You note in your letter that K.S.A. 1977 Supp. 8-2106 provides, in part, that a "notice to appear" shall be issued for a "violation of any of the laws of this state regulating traffic or highways punishable as a misdemeanor . . ." You also point out that K.S.A. 1977 Supp. 8-3108 provides that if a citation, properly issued under K.S.A. 1977 Supp. 8-2106, includes information required by law and is signed by the preparing officer, "then such citation when filed with a court having jurisdiction shall be deemed to be a lawful complaint for the purpose of prosecution under this act."

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A "complaint" is defined, under the Kansas Code of Criminal Procedure, in K.S.A. 1977 Supp. 22-2202 (6) as "a written statement under oath of the essential facts constituting a crime, except that a notice to appear issued by a law enforcement officer pursuant to and in compliance with K.S.A. 1976 Supp. 8-2106 shall be deemed a valid complaint if it is signed by said law enforcement officer."

The commencement of any misdemeanor prosecution is directed by K.S.A. 1977 Supp. 22-2301(1) which provides that "Unless otherwise provided by law, a prosecution shall be commenced by filing a complaint . . ."

Thus, as is apparent from the foregoing discussion, a "notice to appear" property issued by a law officer, in compliance with K.S.A. 8-2106, is a legally sufficient complaint, under K.S.A. 1977 Supp. 22-2301(1), for criminal prosecutions of any law regulating traffic on highways punishable by a misdemeanor, whether such an offense is or is not a part of Kansas Statutes Annotated, Chapter 8.

K.S.A. 41-804 makes it a misdemeanor violation for any person "to transport in any vehicle upon a public highway street or alley any alcoholic liquor" in an open container. The only exception is where the open container is inaccessible to any person in the vehicle. A violation of this law is clearly a violation of the laws of this state regulating "traffic on highways punishable as a misdemeanor" and a notice to appear is therefor legally sufficient to serve as a complaint in such an instance.

K.S.A. 1977 Supp. 8-3108 does provide that a citation shall serve as a complaint for only misdemeanor offenses "under this act," but clearly such procedure is allowed and legally sufficient for any other misdemeanor offense that come within the strictures of the state statutes regulating traffic, through the provisions and procedures of the Kansas Code of Criminal Procedure.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

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