



STATE OF KANSAS

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December 19, 1978

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ATTORNEY GENERAL OPINION NO. 78- 388

Mr. Donald H. Shoop
Greenwood County Attorney
Greenwood County Courthouse
Eureka, Kansas 67045

Re: Criminal Procedure--Appeals--Defendant's Right To Appeal
Even From Judgment After Nolo Contendre Or Guilty Plea

Synopsis: A defendant has the right to appeal a judgment of the
District Magistrate Court, even where defendant has plead
guilty to nolo contendere, K.S.A. 1977 Supp. 22-3609a.

* * *

Dear Mr. Shoop:

You ask whether a defendant who has plead guilty or nolo contendere
in District Magistrate Court retains his right to appeal to the
District Court.

In May of 1977, the legislature amended K.S.A. 1976 Supp. 22-3609a(1).
Until then, the statute read:

"Except when there has been a judgment
of conviction upon a plea of guilty or
nolo contendere, a defendant shall have
the right to appeal from any judgment
of a district magistrate judge."

The 1977 session of the legislature amended the statute by deleting
the words:

"Except when there has been a judgment
of conviction upon a plea of guilty or
nolo contendere,"

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so that the paragraph begins:

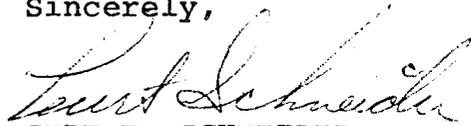
"A defendant shall have the right to appeal from any judgment of a district magistrate judge."

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); Lakeview Gardens, Inc. v. State ex. rel. Schneider, 221 Kan. 211, 214, 557 P.2d 1286 (1976).

The Court has further approved consideration of historical background and changes made in a statute, in determining legislative intent for purposes of statutory construction. Curless v. Board of County Commissioners, 197 Kan. 580, 419 P.2d 876.

Under these rules it is patently obvious that the intent of the legislature, in amending the statute, was to grant a defendant the right to appeal a judgment of conviction by a District Magistrate Judge even where the defendant has plead guilty or nolo contendere.

Sincerely,


CURT T. SCHNEIDER
Attorney General

CRS:MGM:jj