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May 3, 1979

ATTORNEY GENERAL OPINION NO. 79- 77

Mr. Laurence E. Martin
Sheriff of Marshall County
Marysville, Kansas 66508

Re: Counties and County Officers -- County Attorney --
Sheriff -- Duties

Synopsis: Although the primary responsibility for the preservation of peace and the apprehension of persons suspected of violating the law is vested in the sheriff, the county attorney is the state's law officer and official relator in his county in respect to all matters of public concern where the state is or should be a participant in litigation.

In order to fulfill the duties prescribed by statute the county attorney is authorized to obtain all available information regarding all criminal activities obtained by law enforcement agencies within the county.

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Dear Sheriff Martin:

You inquire first as to who is the chief law enforcement officer in the county. Although there is no specific statutory provision in Kansas which establishes a "chief law enforcement officer," it is our opinion, in light of the statutes and case law which discuss the duties and responsibilities of county officers, that the county attorney is the superior county officer in the law enforcement process.

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K.S.A. 19-702 provides:

"It shall be the duty of the county attorney to appear in the several courts of their respective counties and prosecute or defend on behalf of the people all suits, applications or motions, civil or criminal, arising under the laws of this state, in which the state or their county is a party or interested."

From the foregoing provision it is clear that the county attorney is vested with authority to prosecute all criminal actions arising under the laws of this state. It should be noted that the authority set out in K.S.A. 19-702 is not limited to those actions presented for prosecution by local law enforcement, but rather, the authority extends to all criminal activity within the respective jurisdiction. The Supreme Court of Kansas construed the predecessor of K.S.A. 19-702 in State, ex. rel. v. Wyandotte County Commissioners, 140 Kan. 747, 42 P.2d 46 (1934), and stated:

"In governmental theory and by express statute the county attorney is the state's law officer and official relator in his county in respect to all matters of public concern where the state is or should be a participant in litigation. . . .

"This statute, in effect, virtually clothes this officer with the powers of an attorney general within his county. . . ." Id. at 746.

Although the foregoing decision did not concern the prosecution of a criminal action, the impact of the decision is clear in establishing the county attorney as the state's law officer in matters of public concern.

In your request you cited an excerpt from State v. McCarty, 104 Kan. 301 (1919), which indicates that the sheriff is the state's executive and administrative officer in his county. It should be noted that McCarty involved a dispute between a sheriff and city constable regarding custody of an apprehended criminal. Such a situation is clearly dissimilar from the relationship between two county level officers such as a sheriff and county attorney.

Although your precise question has not been decided by the courts of Kansas, it is our opinion that the statutory duties, responsibilities and authority vested in the county attorney indicate that the county attorney is the state's superior officer in the law enforcement process at the county level.

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You further inquire whether all criminal activities in the county must be reported to the county attorney and whether failure to furnish such information is punishable by law. As previously indicated, the county attorney has both the authority and the duty to prosecute criminal actions in the various courts of his or her county. In order to perform that duty it is obvious that the county attorney must have knowledge of all the criminal activity occurring within his or her county. It is our opinion that K.S.A. 19-702 implicitly authorizes the county attorney to demand and receive information regarding criminal activity which is in the possession of law enforcement agencies within the county.

Your final question is whether failure to provide the foregoing information would be punishable by law. Although there appears to be no single statute which would make the withholding of such information from the county attorney punishable by law, it is our opinion that the combined effect of K.S.A. 21-2505, 21-2506 and 75-704 and K.S.A. 1978 Supp. 21-2504 requires disclosure and provides penalties for refusal.

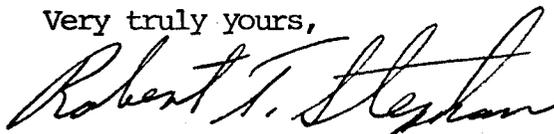
K.S.A. 1978 Supp. 21-2504 requires that sheriffs and police chiefs provide information regarding criminal activity to the Attorney General of the State of Kansas. K.S.A. 75-704 provides that the Attorney General consult with and assist the county attorneys in matters pertaining to their official duties. K.S.A. 21-2505 provides that failure to comply with the requirements of K.S.A. 1978 Supp. 21-2504 constitutes a misdemeanor as well as nonfeasance in office. In construing these statutes as a whole it is clear that the Attorney General in assisting the county attorneys may direct that information set out in K.S.A. 1978 Supp. 21-2504 be provided to the county attorneys. Failure to comply with this directive would subject the refusing party to the sanctions established in K.S.A. 21-2505. This is especially true in light of K.S.A. 21-2506 which provides that the act should be liberally construed so as to effect the purposes of public safety, peace and welfare of the state.

As a final note, we would like to take this opportunity to comment briefly upon the necessity for this opinion. As indicated by the virtual absence of Kansas case law and the general language of the statutes, the law enforcement community of Kansas has only infrequently been embroiled in controversy regarding the "powers" and "authority" of the various parties charged with responsibility for enforcing the laws of this state. The obvious reason for such a void in decisional law emanates from a unified and cooperative law enforcement effort. As crime and the criminal element become ever more sophisticated

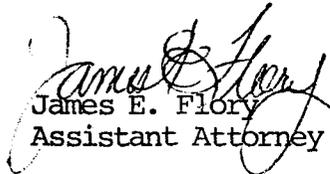
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and prevalent it is necessary now more than ever to concentrate our efforts on our true objective, which is to provide for the safety and welfare of the citizens of this state. We believe that disputes and personal differences within the law enforcement community regarding the authority or superiority of the various officials can only result in less effective law enforcement and diminished constituent protection. In that regard we hope that the substance of this opinion will resolve the issues which prompted your inquiry and will further the concepts of unity and cooperation in your area.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



James E. Flory
Assistant Attorney General

RTS:TDH:JEF:may