



STATE OF KANSAS

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March 12, 1982

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ATTORNEY GENERAL OPINION NO. 82- 65

Curtis E. Campbell
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Cimarron, Kansas 67835

Re: Criminal Procedure -- Code; Arrest -- Jurisdiction
of Municipal Law Enforcement Officers

Synopsis: Law enforcement officers employed by a city may, pursuant to the implied authority contained in K.S.A. 1981 Supp. 8-1001 and K.S.A. 22-2401a, transport an arrested person beyond the territorial limits of the city employing such officers for the respective purposes of administering a chemical test of the person's blood or breath and incarceration in the county jail. Cited herein: K.S.A. 1981 Supp. 8-1001, K.S.A. 19-1930, 22-2401, 22-2401a.

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Dear Mr. Campbell:

On behalf of the City of Montezuma you have requested our opinion as to the authority of a city marshal to transport arrested persons beyond the corporate limits of the city for the purpose of accomplishing a chemical test pursuant to K.S.A. 1981 Supp. 8-1001 or for incarceration.

The jurisdiction of a municipal law enforcement officer is set out in K.S.A. 22-2401a which provides, in pertinent part:

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"Law enforcement officers employed by any city may exercise their powers as law enforcement officers anywhere within the city limits of the city employing them and outside of such city when on property owned or under the control of such city. Such officers also may exercise such powers in any other place when in fresh pursuit of a person."

From the foregoing it is clear that the legislature has limited the territorial jurisdiction of city law enforcement officers as a general rule. That general rule, however, is subject to certain exceptions, i.e., fresh pursuit of an offender or when a request for assistance is made by law enforcement officers of another jurisdiction. K.S.A. 22-2401a(3).

We believe that the two situations you have described also constitute statutory exceptions to the general rule cited above and that the language of K.S.A. 1981 Supp. 8-1001 (chemical test) and K.S.A. 22-2401 (power of arrest) necessarily imply authority to transport persons beyond city boundaries in such situations.

The general rule set forth at 67 C.J.S. Officers, §197, p. 649, provides that:

"Generally, the duties of a public office include those lying fairly within its scope, those essential to the accomplishment of the main purpose for which the office was created, and those which, although incidental and collateral, serve to promote the accomplishment of the principal purposes."

In accord with this general principle is the following statement of the Kansas Supreme Court in The State, ex rel., v. Younkin, 108 Kan. 634 (1921):

"While the powers of a public officer or board are those and those only which the law confers, yet when the law does confer a power or prescribe a duty to be performed or exercised by a public officer, the powers granted and duties prescribed carry with them by necessary implication such incidents of authority as are necessary for the effectual exercise of the powers conferred and duties imposed. In Throop on Public Officers, §542, the correct rule is stated:

"The rule respecting such powers is, that in addition to the powers expressly given by statute to an officer or a board of officers, he or it has, by implication, such additional powers as are necessary for the due and efficient exercise of the powers expressly granted, or as may be fairly implied from the statute granting the express powers.' (See, also, Comm'rs of Brown Co. v. Barnett, 14 Kan. 627.)" Id. at 638.

Other cases have also considered the concept of implied powers in situations where, without them, the governmental agency would have no way to carry out its express statutory powers. See, e.g., Edwards County Commissioners v. Simmons, 159 Kan. 41 (1944); Womer v. Aldridge, 155 Kan. 446 (1942); The State, ex rel., v. Wooster, 111 Kan. 830 (1922); The State, ex rel., v. Younkin, 108 Kan. 634 (1921); Young v. Regents of State University, 87 Kan. 239 (1912); and Brown County v. Barnett, 14 Kan. 627 (1875).

Additionally, it is well established that statutes in pari materia should be construed together so as to harmonize their respective provisions, if reasonably possible to do so [Callaway v. City of Overland Park, 211 Kan. 646, 650 (1973)], and statutes need not be enacted at the same time in order to be regarded as being in pari materia. Claflin v. Walsh, 212 Kan. 1, 8 (1973). As noted in Marshall v. Marshall, 159 Kan. 602, 606 (1945):

"It is the function and duty of courts to reconcile apparent inconsistencies in laws to the end that all may be given full force and effect in their intended field and scope of operation. Whenever that reasonably can be done it never should be held that one law overturns or destroys another." (Citations omitted.)

With the foregoing principles of law in mind we will now address your specific inquiries. K.S.A. 1981 Supp. 8-1001 provides, in part:

"Any person who operates a motor vehicle upon a public highway in this state shall be deemed to have given consent to submit to a chemical test of breath or blood, for the purpose of determining the alcoholic content of his or her blood whenever he or she shall be arrested or otherwise taken into custody for any offense involving

operating a motor vehicle under the influence of intoxicating liquor in violation of a state statute or a city ordinance and the arresting officer has reasonable grounds to believe that prior to arrest the person was driving under the influence of intoxicating liquor. The test shall be administered at the direction of the arresting officer."

Thus, law enforcement officers are by statute expressly authorized to have a chemical test of breath or blood administered at their direction. We believe that the express authorization of K.S.A. 1981 Supp. 8-1001 creates an implied power to expand the jurisdictional limitations of K.S.A. 22-2401a in the event the capability of having such a chemical test performed within the city limits is lacking. It is our conclusion that the intent of K.S.A. 1981 Supp. 8-1001 cannot be thwarted by the absence of equipment or personnel within the city limits. We would note, however, that the distances traveled to accomplish a chemical test should be reasonable and that the closest available source should be utilized.

With respect to your second question, the authority of a law enforcement officer to effect an arrest is set out in K.S.A. 22-2401, which provides:

"A law enforcement officer may arrest a person when:

"(a) He has a warrant commanding that such person be arrested; or

"(b) He has probable cause to believe that a warrant for the person's arrest has been issued in this state or in another jurisdiction for a felony committed therein; or

"(c) He has probable cause to believe that the person is committing or has committed

"(1) A felony; or

"(2) A misdemeanor, and the law enforcement officer has probable cause to believe that:

"(i) Such person will not be apprehended or evidence of the crime will be irretrievably lost unless such person is immediately arrested; or

"(ii) Such person may cause injury to himself or others or damage to property unless immediately arrested; or

"(d) Any crime has been or is being committed by such person in his view."

From the foregoing it is clear that under selected circumstances it is necessary for a law enforcement officer to effect an arrest and thereafter incarcerate the individual. It is my understanding from your request that the City of Montezuma does not have detention facilities and your inquiry involves the authority of the city marshal to transport an arrested person to the county jail for incarceration.

The legislature has clearly contemplated situations such as the one you describe, as is evidenced by K.S.A. 19-1930, which provides, in part:

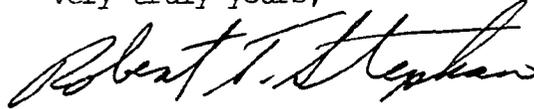
"The sheriff or the keeper of the jail in any county of the state shall receive all prisoners committed to the sheriff's or jailer's custody by the authority of the United States or by the authority of any city located in such county and shall keep them safely in the same manner as prisoners of the county until discharged in accordance with law. The county maintaining such prisoners shall receive from the United States or such city compensation for the maintenance of such prisoners in an amount equal to that provided by the county for maintenance of county prisoners and provision shall be made for the maintenance of such prisoners in the same manner as prisoners of the county. The governing body of any city committing prisoners to the county jail shall provide for the payment of such compensation upon receipt of a statement from the sheriff of such county as to the amount due therefor from such city." (Emphasis added.)

Since a city law enforcement officer is authorized by law to make arrests and is further authorized to lodge such arrested persons in the county jail, it is our opinion that a city law enforcement officer is clearly vested with the authority to transport arrested persons to a county jail which is located outside the territorial limits of the city employing the officer. We believe the foregoing statutes when considered in pari materia create an implied authority to act beyond the limitation

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imposed by K.S.A. 22-2401a. We would note, however, that our research reveals no statutes authorizing a city law enforcement officer to transport an arrested person to and incarcerate an arrested person in the county jail of another county.

Very truly yours,



ROBERT T. STEPHAN
Attorney General



James E. Flory
Deputy Attorney General

RTS:JEF:may