



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 87

Loren L. Taylor
Police Legal Advisor
Kansas City, Kansas Police Department
Kansas City, Kansas 66101

Re: Criminal Procedure -- Arrest -- Arrest by Law Enforcement
Officer From Another Jurisdiction; Fresh Pursuit Into
The State of Missouri.

Synopsis: A Kansas law enforcement officer may arrest without a
warrant a person in Missouri for a crime committed in
Kansas when the officer is in fresh pursuit of a
fleeing felon, or when a felony is or has been
committed in Missouri. Cited herein: K.S.A. 22-2204.

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Dear Mr. Taylor:

As the legal advisor for the Kansas City, Kansas police department
you request our opinion as to whether a Kansas law enforcement officer
may make an arrest in the state of Missouri for a misdemeanor committed
in Kansas. The uniform fresh pursuit law enacted by the State of
Missouri provides in pertinent part:

"Any member of a duly organized state, county, or
municipal peace unit of another state of the United
States who enters this state in fresh pursuit, and
continues within this state in such fresh pursuit,

of a person in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county, or municipal peace unit of this state, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state: provided, the rights extended by this section shall be extended only to those states granting these same rights to peace officers of this state who may be in fresh pursuit of suspected criminals in such reciprocating states." Missouri Statutes Annotated 544.155.
(Emphasis added.)

It is our opinion that three elements are necessary to make a valid arrest in Missouri under its fresh pursuit statute. First, the pursuit into Missouri must be fresh, secondly the pursuing officer must have grounds to believe that a felony has been committed in a state other than Missouri, and thirdly the state from which the pursuit is initiated must extend the State of Missouri a reciprocal right to fresh pursuit.

Kansas has enacted a fresh pursuit statute that constitutes the reciprocity required under Missouri law. K.S.A. 22-2404. However, Missouri permits arrest under their fresh pursuit statute only for felonies committed in the other state. It is our opinion that for misdemeanors committed in Kansas, no arrest can be effected in Missouri pursuant to Missouri's fresh pursuit statute.

Finally we consider Kansas Attorney General Opinion No. 77-291, which opined that Kansas peace officers had the same authority as a private citizen of Missouri to make an arrest in Missouri for violations of Kansas law. We believe that Attorney General Opinion No. 77-291 misstates the law and we therefore withdraw that opinion.

In addition, it is our opinion that in Missouri, a citizen may only make an arrest when a felony has actually been committed, for the protection of property, or for a breach of the peace. Helming v. Adams, 509 S.W.2d 159 (1974), State v. Parker, 378 S.W.2d 274 (1964) and Teel v. May Dept. Stores Co., 155 S.W.2d 74 (1941). We find no authority to arrest a person in Missouri for a crime committed in Kansas, except pursuant to the above cited uniform fresh pursuit law. In State v. Shienle, 218 Kan. 637 (1976), the Kansas Supreme Court upheld the arrest of a suspect in Missouri by a Kansas police detective.

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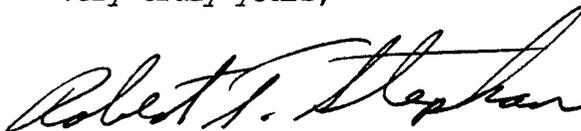
The arrest was honored as a citizens' arrest only because the State of Missouri recognizes as a felony the act of bringing stolen property into Missouri. Id. at 642.

The Court established guidelines to govern such arrests, as follows:

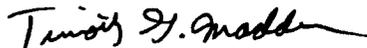
"When an arrest without a warrant is made by a Kansas police officer outside the territorial limits of his jurisdiction the arrest may be a legal private citizen's arrest when it is established that: (1) arrests by private citizens are recognized as legal in the state where the arrest is made; (2) a felony has or was being committed in that state; (3) the arresting officer had probable cause to believe the person arrested is guilty thereof; and (4) the officer acted reasonably under the exigencies attending the arrest." Id. at p. 642 and 643. (Emphasis added.)

Therefore, it is our opinion that a Kansas law enforcement officer may arrest without a warrant a person in Missouri for a crime committed in Kansas when the officer is in fresh pursuit of a fleeing felon, or when a felony is or has been committed in Missouri.

Very truly yours,



ROBERT T. STEPHAN
Attorney General



Timothy G. Madden
Assistant Attorney General

RIS:JEF:TGM:may