



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

December 16, 1985

ATTORNEY GENERAL OPINION NO. 85- 176

Laurence R. Hollis, P.A.
Petroleum Building, Suite 701
Wichita, Kansas 67202-4293

Re: Cities and Municipalities -- Code for Municipal
Courts; General Provisions -- Municipal Court;
Place of Courtroom

Synopsis: K.S.A. 12-4109 requires each city to provide a
suitable courtroom for the municipal court, and
states that the court shall be held at such time
and places designated by city ordinance. Nothing
in the statute, or in the Code of Procedure for
Municipal Courts of which it is a part, prohibits a
city from designating a location outside the city
limits as the site of the municipal court.
However, if appearing at a designated site imposes
a burden on defendants which is unreasonable, such
action of a city may be found to be a violation of
due process under the United States Constitution.
Given the location of the City of Eastborough and
the lack of any suitable courtroom facility within
the city limits, the designation of a courtroom in
the Sedgwick County Courthouse is not
unreasonable. Cited herein: K.S.A. 12-4109; Kan.
Const., Art. 12, §5; U.S. Const., Fourteenth
Amendment.

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Dear Mr. Hollis:

As Municipal Judge for the City of Eastborough, you request our opinion concerning the location which has been designated by the city for the business of the municipal court. Specifically, you inform us that Eastborough, a city of the third class, is entirely surrounded by Wichita, and that there are no businesses or public buildings within the city. As this is the case, the city has designated the Sedgwick County Courthouse as the site for the municipal court. In that questions have been raised from time to time concerning the legality of this practice, you desire to obtain our opinion.

The municipal court for Eastborough is governed by the Code of Procedure for Municipal Courts which is found in the statutes at K.S.A. 12-4101 et seq. Although the code has been held to be non-uniform, and so subject to alteration under a city's power of home rule [City of Junction City v. Griffin, 227 Kan. 332, 337 (1980)], we have no indication that changes have been made by the city in any respect relevant here. The applicable section of the code, K.S.A. 12-4109, states:

"Each city shall provide at the expense of the city a suitable courtroom for the municipal court, together with all necessary supplies and records. Municipal court shall be held at such time and places designated by ordinance."

The city has in accordance with this language designated the Sedgwick County Courthouse as the location of the court. The courthouse is located on the north side of downtown Wichita, and is no more than 5 to 6 miles from Eastborough, which is located on the east side of the metropolitan area. Although you do not so state, we assume from the circumstances that a majority of the persons appearing in municipal court are residents of Wichita, rather than Eastborough, and that the offenses are almost exclusively traffic violations.

In our opinion, nothing in the Code of Procedure for Municipal Courts precludes the ordinance in question, whereby municipal court sessions are held in the Sedgwick County Courthouse. Neither in K.S.A. 12-4109 nor elsewhere in the code is it

stated that a city's municipal court must be held within the city limits of that city. Even if this were the case, the city could, as was noted earlier, amend the code by charter resolution to provide for such a location, in that the code is non-uniform and so is subject to the city's power of home rule under Article 12, Section 5 of the state constitution.

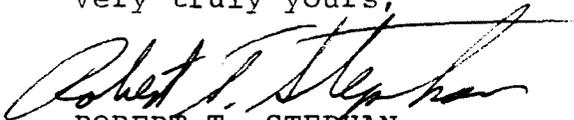
Of course, it should not be assumed that a city's power in this regard is without limits, for it is possible to imagine facts under which a designation of a municipal court site in another city would be so burdensome on defendants as to be a denial of due process. In general, the right of due process provided by the Fourteenth Amendment requires that state action not be unreasonable, arbitrary or capricious, and that the means selected have a real and substantial relation to the objective sought to be obtained. Cardarella v. City of Overland Park, 228 Kan. 698 (1980). In the context of a judicial proceeding, due process mandates that an individual receive a fair and impartial hearing before an unbiased tribunal. State v. Sherry, 233 Kan. 920 (1983). The determination of due process is made upon the particular facts present in each case. Jones v. Marquez, 526 F.Supp. 870 (D. Kan. 1981).

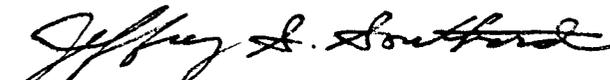
In the present situation, we do not believe that due process is offended by the holding of the Eastborough Municipal Court in the Sedgwick County Courthouse. Eastborough is located within Sedgwick County, and for many defendants, attending court at the courthouse would require them to travel a lesser distance than would going to a location within the city. Clearly, the designation of a site outside the county, or even at some sites within the county, could raise due process questions. However, under the facts here, we do not believe that a due process challenge could be successfully brought. See, e.g. Mohon v. Harkreader, 18 Kan. 383 (1877) (civil trial held in law office instead of courtroom; defendant waived right to object through his attendance and participation in proceedings; court found nothing to indicate that change of location impaired right to fair hearing).

In conclusion, K.S.A. 12-4109 requires each city to provide a suitable courtroom for the municipal court, and states that the court shall be held at such time and places designated by city ordinance. Nothing in the statute, or in the Code of Procedure for Municipal Courts of which it is a part, prohibits a city from designating a location outside the city

limits as the site of the municipal court. However, if appearing at a designated site imposes a burden on defendants which is unreasonable, such action of a city may be found to be a violation of due process under the United States Constitution. Given the location of the City of Eastborough and the lack of any suitable courtroom facility within the city limits, the designation of a courtroom in the Sedgwick County Courthouse is not unreasonable.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw