



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87-80

Acting Colonel E. P. Moomau
Kansas Highway Patrol
122 S.W. Seventh Street
Topeka, Kansas 66603-3847

Re: Criminal Procedure--Arrest--Arrest by Law
Enforcement Officer from Another Jurisdiction;
Uniform Law on Fresh Pursuit

Synopsis: The ability of a Kansas police officer to arrest an individual in another state for a traffic infraction or misdemeanor committed in Kansas depends on the Uniform Law on Fresh Pursuit adopted by the state in which the arrest is to be made. The procedure to be followed pursuant to a lawful arrest also depends largely on the laws of the state in which the arrest is made. In general, Kansas law enforcement officials in fresh pursuit may arrest in Colorado for any crime, whereas they may arrest in Missouri, Nebraska and Oklahoma only on the ground that the individual is believed to have committed a felony in Kansas. Cited herein: K.S.A. 8-1568; K.S.A. 1986 Supp. 8-2104; 21-3105; K.S.A. 22-2404; K.S.A. 1986 Supp. 22-2713; K.S.A. 22-2714; 22-2715; 22-2728.

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Dear Colonel Moomau:

As former superintendent of the Kansas Highway Patrol, Colonel Cantwell requested our opinion regarding the stopping of misdemeanants or traffic infraction violators in another state

after the violation is viewed by law enforcement officers in this state. Colonel Cantwell's specific questions are as follows:

"Initially, can a police officer from this state legally pursue a misdemeanor or traffic infraction violator into another state?

"If this is permissible, what procedures can or should be followed in the following circumstances:

- A felony charge is developed following the stop in another state, e.g. - an outstanding felony warrant exists or there is probable cause to effect a felony arrest.
- A traffic infraction was viewed by the officer and following the stop in another state, a misdemeanor charge is developed that requires an immediate appearance before the district court in Kansas or the provisions of K.S.A. 8-2107 apply, e. g. - the violator is driving under the influence or his driving privileges have been suspended in the state of Kansas; or he is found to be transporting an open container of alcoholic liquor or cereal malt beverage accessible while vehicle is in motion."

The ability of a Kansas police officer to stop and arrest an individual in a state other than Kansas is determined by the laws of the state in which the stop occurs. Kansas and its adjoining states have all adopted the Uniform Law on Fresh Pursuit. The states differ, however, on the extent of that law. In Kansas and Colorado, the law provides essentially:

"Any peace officer of another state who enters this state in fresh pursuit and continues within this state in fresh pursuit of a person in order to arrest him on the ground that he has committed a crime in the other state has the same authority to arrest and hold such person in custody as a peace officer of this state has to arrest and hold a person in custody." (Emphasis added). Colo. Rev. Stat. §16-3-104(2); K.S.A. 22-2404(2).

In contrast, the laws of Oklahoma, Nebraska and Missouri provide:

"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." (Emphasis added). Mo. Rev. Stat. §544.155; Neb. Rev. Stat. §29-416; Okla. Stat. tit. 22, §221.

"Fresh pursuit" is defined in all states as pursuit without unnecessary delay. K.S.A. 22-2404(1)(c); Colo. Rev. Stat. §16-3-104(1)(c); Mo. Rev. Stat. §544.155; Neb. Rev. Stat. §29-420; Okla. Stat. tit. 22, §225.

Thus, if an individual is pursued by Kansas law enforcement without unnecessary delay into Colorado after having committed a crime in Kansas, the Kansas law enforcement officials have the authority to stop and arrest that individual in Colorado. Traffic infractions and misdemeanors are crimes in the state of Kansas. K.S.A. 1986 Supp. 21-3105. However, Kansas law enforcement officials may not arrest an individual merely for a traffic violation. K.S.A. 1986 Supp. 8-2104(c). Therefore, only a misdemeanor or felony offense will justify a stop and arrest by Kansas officers in the state of Colorado. It is possible that a misdemeanor may develop in Kansas following the initial traffic infraction which would allow officers to make an arrest. For example, if the Kansas officer properly signals the violator to stop in Kansas and such signal is not obeyed, the offense of attempting to elude or fleeing a police officer, K.S.A. 8-1568, may arise.

In order for a Kansas law enforcement official to make a lawful stop and arrest in Nebraska, Oklahoma, or Missouri, the individual pursued must be suspected of having committed a felony in Kansas. Thus, Kansas law enforcement officials may

not arrest in Nebraska, Oklahoma or Missouri for the commission of a misdemeanor or traffic infraction in Kansas.

The procedure to be followed upon an arrest by Kansas law enforcement officials in another state differs slightly from state to state. See Neb. Rev. Stat. §29-417; Mo. Rev. Stat. §544.155; Okla. Stat. tit. 22, §222; Colo. Rev. Stat. §16-3-104(3). Generally, the arresting officer is required to take the person arrested without unreasonable delay before the magistrate of the county in which the arrest is made. The magistrate is to conduct a hearing for the purpose of determining the lawfulness of the arrest. If the arrest is held to be lawful, the magistrate is to "commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor" of the state in which the arrest occurs. Presumably, in order to remain consistent with extradition laws, a warrant would first have to issue from the state of Kansas upon information constituting probable cause from the pursuing officer, unless the offense is a felony as described in K.S.A. 22-2714. If the arrest is held to be unlawful, the individual arrested is to be discharged.

If the laws of the state into which an individual is pursued do not allow an arrest by out-of-state law enforcement officials, such officials may request law enforcement in that state to come to the scene. In this situation it would be advisable to terminate pursuit by Kansas officers upon reaching the state line in that they would no longer have jurisdiction. Information taken from the pursuing officers may be deemed probable cause for stop by home-state officers. If the offense is continued in the arresting state, such as driving under the influence or transporting an open container, the home-state officers can make an independent arrest, and the Kansas officers may work on getting a Kansas warrant and possible extradition to Kansas.

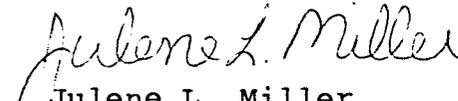
If an individual is properly stopped and arrested by Kansas officers in a state other than Kansas, and is extradited pursuant to law, that individual "may be tried in [Kansas] for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition." K.S.A. 22-2728. Thus, a felony or misdemeanor charge which develops following the lawful stop may be resolved along with the crime for which the individual was stopped. If a felony warrant is outstanding on the individual, the extradition proceedings will apply, including

the appearance before a magistrate to allow posting of a bond. K.S.A. 1986 Supp. 22-2713; K.S.A. 22-2715.

In conclusion, the ability of a Kansas police officer to arrest an individual in another state for a traffic infraction or misdemeanor committed in Kansas depends on the Uniform Law on Fresh Pursuit adopted by the state in which the arrest is to be made. The procedure to be followed pursuant to a lawful arrest also depends largely on the laws of the state in which the arrest is made. In general, Kansas law enforcement officials in fresh pursuit may arrest in Colorado for any crime, whereas they may arrest in Missouri, Nebraska and Oklahoma only on the ground that the individual is believed to have committed a felony in Kansas.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

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