



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

March 31, 1975

Opinion No. 75- 144

Mr. Frank L. Johnson
Chief Attorney
Highway Commission of Kansas
State Office Building
Topeka, Kansas 66612

Dear Mr. Johnson:

You have requested several opinions from this office concerning the proper enforcement of K.S.A. 8-1730 in light of the Temporary Injunction issued by Judge George Templar on September 18, 1974, in *Kansas State Marine Dealers Association, Inc., et al v. Kansas State Highway Commission, et al*, Civil Action #74-1697.

You are correct in your basic premise that the Temporary Injunction modified the Temporary Restraining Order. An examination of the history on this particular case shows that an Order was entered on August 12, 1974, restraining enforcement of what is now K.S.A. 8-1730 in its entirety. This statute in part provides:

"(a) Every school bus, in addition to any other equipment and distinctive markings required by this act, shall be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall display to the front two (2) alternately flashing red lights located at the same level and to the rear two (2) alternately flashing red lights at the same level, and these lights shall be visible at five hundred (500) feet in normal sunlight.

(b) Any school bus, in addition to the lights required by subsection (a), shall be equipped with yellow signal lamps mounted near each of the four (4) red lamps and at the same level but closer to the vertical centerline of the bus, which shall display two (2) alternately flashing yellow lights to the front and two (2) alternately flashing yellow lights to the rear, and these lights shall be visible at

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five hundred (500) feet in normal sunlight. These lights shall be displayed by the school bus driver at least two hundred (200) feet, but not more than one thousand (1,000) feet, before every stop at which the alternately flashing red lights required by subsection (a) will be actuated."

On the subsequent September 18, this Order was modified by a Temporary Injunction which enjoined only subsection (b). Accordingly, enforcement of subsection (a) remains unaffected. More specifically, the red light system is to be enforced under the provisions of K.S.A. 8-1556 in the same manner as mandated by the statute. Furthermore, the commission may adopt rules and regulations promulgating standards and specifications under subsection (c) that relate to this red light flashing system. However, the Temporary Injunction, as applied to subsection (b), limits the commissions' power under subsection (c) in that no rules or regulations may be promulgated as to the amber light system until at such time as the Temporary Injunction is dissolved.

Since the Temporary Injunction was directed solely at subsection (b) of K.S.A. 8-173, this office does not perceive any obstacle to enforcement of K.S.A. 8-1556 in compliance with the terms of that statute. An examination of this statute shows that it is only the red visual signals required under K.S.A. 8-1730(a) that are directly involved in K.S.A. 8-1556. Specifically, K.S.A. 8-1556(a) and (b) provide:

"(a) The driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop before reaching such school bus when there is in operation on said school bus the flashing red lights specified in subsection (a) of section 8-1730, and said driver shall not proceed until such school bus resumes motion or he is signaled by the school bus driver to proceed or the flashing red lights and the stop signal arm are no longer actuated.

(b) Every school bus shall be equipped with red visual signals meeting the requirements of subsection (a) of section 8-1730 of this act, which may be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children. A school bus driver shall not actuate said special visual signals:

- (1) In business districts and on urban arterial streets designated by the commission or local authorities;
- (2) At intersections or other places where traffic is controlled by traffic-control signals or police officers; or
- (3) In designated school bus loading areas where the bus is entirely off the roadway."

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Clearly, the Injunction against the amber light system does not prevent the use of the red light system in compliance with K.S.A. 8-1730(a) whenever a school bus is stopped on a highway. In other words, the driver of the school bus must still activate the red light system whenever the school bus is stopped on a highway for the purpose of receiving or discharging school children.

Since the Temporary Injunction Order does not specify or limit application to any particular part of K.S.A. 8-1730(b), it must be presumed that the entire subsection is enjoined. Accordingly, school buses do not need to display the alternately flashing amber lights between two hundred (200) feet and one thousand (1,000) feet before each stop. In summary, the proper enforcement of K.S.A. 8-1556 requires only the use of the alternately flashing lights as specified therein. Until the Temporary Injunction is dissolved, no violations for failure to use the amber light system may be issued.

Your final request concerns the proper signal for those stops excepted under K.S.A. 8-1730(b) (1) from the requirement of the special visual signals. It should be noted that the phrase "special visual signals" used in the statute refers to the red and amber flashing light systems. As for the traditional stop-arm signal, our research has revealed no statute governing its use. However, it must be presumed that the legislature did not intend to jeopardize the safety of school children by failing to provide an adequate means of warning other drivers that a school bus was about to make a stop on an urban arterial street or in a business district. Towards this end, K.S.A. 8-1730(c) provides that:

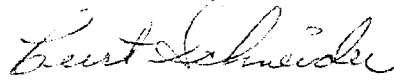
"(c) The commission is authorized to adopt rules and regulations promulgating standards and specifications applicable to lighting equipment on and special warning devices to be carried by school buses consistent with the provisions of this act, but supplemental thereto. Such standards and specifications shall correlate with and so far as consistent with the provisions of this act conform to the specifications then current as approved by the society of automotive engineers."

The point to be made is that the commission is given the authority to promulgate rules and regulations concerning the standards applicable to special warning devices to be carried by school buses which are consistent but supplemental to the other provisions of the motor vehicle code. Accordingly, the responsibility for the rules and regulations governing the proper signals to be used by school buses stopping in business districts and on urban arterial streets rests with the State Highway Commission. This is consistent with K.S.A. 8-2009 which gives the highway commission in conjunction with the Commissioner of Education, the power to adopt rules and regulations affecting the design and operation of school buses. Therefore, it

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is the opinion of this office that the State Highway Commissions bear the responsibility for promulgating the rules and regulations necessary to govern the use of the stop-arm signal in those situations excepted by K.S.A. 8-1656(b)(1).

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS/HW/ksn