STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 19, 1975

Opinion No. 75-229

Mr. Oscar Meyer
Sheriff of Trego County
Wakeeney, Kansas 67672

Dear Mr. Meyer:

You requested an opinion from this office in regard to K.S.A. 1974 Supp. 8-1566(a). As I read your letter, you have raised three questions in regard to said statute.

(1) What does it take to constitute a reckless driving charge?

(2) What is necessary to prove willful and wanton?

(3) Does both willful and wanton have to be shown in order to constitute a reckless driving charge?

The first two questions must be taken together in order to provide a complete answer.

There can be no conclusive answer or examples as to what constitutes a reckless driving charge, except to cite the statute since reckless driving depends on the circumstances of each case. C.J.S., Motor Vehicle, § 609 p. 312.

K.S.A. 1974 Supp. 1566(a) states:

> "Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving."

The factors involved in each case will determine if one has willfully or wantonly driven with disregard for the safety of persons or property. The time of day, location, conditions of the road, weather

conditions, types of vehicles, etc., must be considered in determining whether a person acted "willfully" or "wantonly". C.J.S., Motor Vehicle, § 609 p. 313. One can drive under the speed limit, yet be held guilty of reckless driving if under the circumstances the driver's actions were "willful" or "wanton". The actions of the driver under the circumstances will determine if the driver was acting in a "willful" or "wanton" disregard for the safety of persons or property.

While circumstances must be considered, "willful" or "wanton" must be defined in order to apply the statute. A driver's actions can be said to be "willful" or "wanton" when under the circumstances he intentionally committed some unlawful act or acted with knowledge that injury to another is probable. C.J.S., Motor Vehicle, § 611 p. 312. The intent with which the act was done or knowledge of its criminal character is usually not material.

The Kansas courts have defined "wanton conduct" as a realization of the imminence of injury to others resulting from one's act or failure to act and an indifference to whether injury occurs or not. Byers v. Hesston Appliance, Inc., 212 Kan. 125.

"Willfully" has been defined to mean conduct that is purposeful and intentional and not accidental. It is not necessarily employed as a synonym of "unlawful", "maliciously" or "fruadulent", since ordinarily, it does not embrace an evil intent, State v. Roberson, 210 Kan. 209.

The terms "willful" and "wanton", therefore, embrace more than mere negligence or mistake. It is action with a realization of the imminence of danger and reckless disregard of the consequence.

The necessary intent may be constructive rather than actual. Intent may be established by the action of the driver under the circumstances. For example, an inference may be drawn when a driver operates his vehicle at a very high rate of speed while blinded by dust, that the driver realized imminent danger and totally disregarded the consequence of his unlawful act. State v. Goetz, 171 Kan. 703. It should be noted that it is not necessary that an accident occur in order to make a charge of reckless driving. State v. Walker, 199 Kan. 508. "Willful" and "wanton" both have been used to mean a realization of the imminence of injury to actions from one's act and an indifference as to whether injury occurs or not.

Your last question raises the problem as to whether both "willful" and "wanton" must be proven. The statute states "willful" or "wanton", indicating that both need not be proven. However, as mentioned above, proof of one is proof of the other, as these terms are used under the statute. While there is an historical difference between

"willful" and "wanton", the difference is meaningless as to prosecution under the statute. Many jurisdictions with exactly the same phraseology as the statute in question have recognized both terms as synonymous. C.J.S., Motor Vehicle, § 611 p. 316.

The Kansas courts have recognized that "willful" and "wanton" as used in the statute, are synonyms. The Kansas courts have defined what actions are "willful" and "wanton" under various circumstances, but have not drawn any distinction between "willful" and "wanton" as it pertains to the reckless driving statute. State v. Walker, 199 Kan. 508. Therefore, it would be futile and meaningless to try and draw a distinction under the statute.

In conclusion, reckless driving is dependent upon actions taken under the circumstances and these actions must suggest a "willful" or "wanton" disregard for the safety of persons or property. "Willful" and "wanton" is defined as a realization of the imminence of danger and a reckless disregard and complete indifference and unconcern for the probable consequences of the wrongful act. There is no necessity to distinguish "willful" and "wanton" as used in the statute.

Yours very truly,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

CTS/RRS/ksn