



STATE OF KANSAS

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Attorney General

July 7, 1976

ATTORNEY GENERAL OPINION NO. 76-208

Mr. O. D. Turner
Secretary of Transportation
Kansas Department of Transportation
State Office Building
Topeka, Kansas 66612

RE: Motor Vehicles - Motorcycles - Safety Helmets

SYNOPSIS: Effective July 1, 1976, operators and riders of motorcycles in Kansas who are sixteen years of age or older are no longer required to wear protective headgear while operating or riding motorcycles. The United States Secretary of Transportation may, under the Highway Safety Act of 1976, effective May 5, 1976, still require such headgear of persons under the age of eighteen years, but funds may not be withheld from the State of Kansas under 23 United States Code §402 until the Secretary submits a report to Congress on or before July 1, 1977, evaluating the adequacy and appropriateness of all uniform safety standards established under that section.

* * *

Dear Secretary Turner:

You inquire concerning the status of motorcycle helmet requirements in effect in Kansas under 1976 House Bill 2353, which became effective July 1, 1976.

Prior to its amendment by this bill, K.S.A. 8-1598 provided in pertinent part thus:

"(a) No person shall operate or ride upon a motorcycle unless wearing protective headgear

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which complies with standards established by the secretary of transportation."

This provision was repealed by section 2 of House Bill 2353. Section 1(a) of that bill imposes a new helmet requirement which is applicable only to persons under the age of sixteen years:

"No person under the age of sixteen (16) shall operate or ride upon a motorcycle unless wearing protective headgear which complies with standards established by the secretary of transportation."

Thus, motorcycle operators and riders who are sixteen years or older are no longer required to wear protective headgear.

The legislature evidently intended to make repeal of the former requirement, applicable to all persons and not only those under sixteen years of age, effective only when Congress acted to eliminate the requirement that states impose similar requirements as a condition of eligibility for federal highway funds. Thus, section 1(e) of House Bill No. 2325 states thus:

"The provisions of this section which would have the effect of permitting persons who are sixteen (16) years of age or older to operate or ride upon a motorcycle without protective headgear which complies with standards established by the secretary of transportation, shall not have that effect until the date when the Congress of the United States shall remove the authority under federal law to prohibit the making of or to reduce the amount of any grant of federal moneys to the state of Kansas for the failure to require each person operating or riding upon a motorcycle to wear protective headgear which complies with standards established by the secretary of transportation."
[Emphasis supplied.]

The evident intent was to make repeal of former K.S.A. 8-1598 contingent upon and effective after congressional action. However, it is only section 1 of the bill which was made conditional upon that action. Section 2 repealed the former section, and did so absolutely and unconditionally. It is no longer in force and effect to provide a basis for prosecution of any person sixteen

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years of age or older for failure to wear protective headgear while operating or riding on a motorcycle.

Section 208(a) of the Highway Safety Act of 1976, Pub.L. 94-280, effective May 5, 1976, amends a portion of 23 U.S.C. §402 to state thus:

"For the purpose of the seventh sentence of this subsection, a highway safety program approved by the Secretary shall not include any requirement that a State implement such a program by adopting or enforcing any law, rule, or regulation based on a standard promulgated by the Secretary under this section requiring any motorcycle operator eighteen years of age or older or passenger eighteen years of age or older to wear a safety helmet when operating or riding a motorcycle upon the streets and highways of that State"

Thus, the United States Secretary of Transportation may still require that a state adopt a law, rule or regulation based on a standard requiring any motorcycle operator or rider under the age of 18 to wear a safety helmet. Should the Secretary do so, Kansas would be unable to comply at the present time, because our present law extends this requirement only to persons 15 and under.

It appears, however, that Congress may have forestalled such action at least until July 1, 1977. Section 208(b) of the Highway Safety Act of 1976 states thus:

"The Secretary of Transportation shall, in cooperation with the States, conduct an evaluation of the adequacy and appropriateness of all uniform safety standards established under section 402 of title 23 of the United States Code which are in effect on the date of enactment of this Act. The Secretary shall report his findings, together with his recommendations, including but not limited to, the need for revision or consolidation of existing standards and the establishment of new standards, to Congress on or before July 1, 1977. Until such report is submitted, the Secretary shall not, pursuant to subsection (c) of section 402 of title 23, United States Code, withhold any apportionment or any funds apportioned to any State because such State is failing to implement a highway safety program approved by the Secretary in accordance with such section 402." [Emphasis supplied.]

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Thus, until the required report is submitted to the Congress, the Secretary may not withhold funds under the cited section from the State of Kansas for failure to comply with a standard requiring the use of motorcycle safety helmets.

This opinion confirms my public statement regarding this matter of June 23, 1976.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:en