



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 12, 1977

ATTORNEY GENERAL OPINION NO. 77-226

Colonel Allen Rush
Superintendent
Kansas Highway Patrol
Townsite Plaza
Building 2, Suite 130
Topeka, Kansas 66603

Re: Courts--Traffic Offenses--Bond

Synopsis: A bank card draft which is authorized by 1977 Senate Bill 76 as a bond for offenses enumerated in K.S.A. 8-2107(d), as amended, is not an acceptable and sufficient bond unless said draft will be honored by the issuing institution by payment to the court of the full amount required for the offense involved by subsection (d). The bond represents an obligation to the State of Kansas, and no official of the state, including the court accepting said bond, is authorized to accept payment thereof at a discounted rate in an amount less than the full amount required by law for the offenses involved.

* * *

Dear Colonel Rush:

K.S.A. 8-2107(a), as amended by 1977 Senate Bill 76, provides that any person who is halted by a member of the state highway patrol or by any other police officer for any violation specified in subsection (d) thereof, may be required to deposit with the officer a valid Kansas driver's license or a valid driver's license issued by any state which has entered into a reciprocal agreement with the Division of Vehicles. In lieu of depositing a driver's

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license, the motorist may elect to give bond in the amount fixed for the offense by subsection (d). Prior to amendment by the 1977 legislature, bond could be furnished only by a cash bond or a guaranteed arrest bond certificate issued by either a surety company or an automobile club which was authorized to transact business in this state. Senate Bill 76, found at ch. 38, L. 1977, permits bond to be furnished by a "bank card draft from any valid and unexpired credit card approved by the division" You advise that preliminary negotiations with bank card issuers' representatives have indicated that a bank card draft is redeemable only at a discounted rate, so as to reimburse the processing center for its costs and to realize a profit for the issuing bank. Accordingly, the question arises whether a court receiving a traffic bond in the form of a bank card draft may discount the draft to the bank card collection bank. Additionally, you indicate, bank card issuers require the draft to be forwarded for payment within three working days after its receipt. Discounting prior to the court appearance would thus leave the court without funds to reimburse the offender in the event there is no forfeiture.

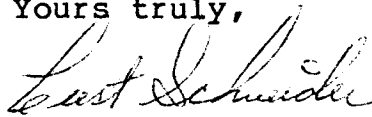
Under the Uniform Commercial Code, at K.S.A. 84-3-104(1) and (2), a draft is a writing signed by the maker or drawer containing an unconditional order to pay a sum certain in money, payable on demand or at a definite time, and payable to order or to the bearer. The bond required to be furnished under K.S.A. 8-2107 constitutes an obligation to the State of Kansas, and the bond must constitute an unconditional obligation to pay to the court the sum required for the offense by K.S.A. 8-2107(d), as amended. A draft which, when presented for payment, can be honored only at a discounted rate, i.e., by payment of an amount less than that required by subsection (d), is not in fact a bond which will assure payment to the court of the full amount required by law for the offense involved.

There is no authority in K.S.A. 8-2107 as amended for the court to accept a bond in any amount less than that fixed by subsection (d), or to accept a bond which, although on its face is for the required amount, will not be honored by payment in full of the required amount, and which will yield the court, and thus the state, an amount less than that required by subsection (d). Thus, in my judgment, a court may not accept a bank card draft as a bond under subsection (c) which will not be honored by payment

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in full of the amount of the bond, and payment of which can be enforced only at a discounted rate.

Yours truly,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj