



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

August 30, 1979

ATTORNEY GENERAL OPINION NO. 79- 197

Mr. James A. Kuharic
Stevens County Attorney
P.O. Box 39
112 East Sixth Street
Hugoton, Kansas 67951

Re: Infants -- Juvenile Code -- Authorized Orders of
Disposition

Synopsis: As a condition of an order of probation, a judge of a district court may exercise statutory discretion to restrict or prohibit the use of a driver's license by a minor found to have violated any of six serious traffic offenses and adjudged to be a miscreant child.

* * *

Dear Mr. Kuharic:

You have inquired as to whether a judge of a district court may suspend or remove the drivers license of a minor who has been charged with a violation of K.S.A. 8-262 (driving with cancelled, suspended or revoked license); K.S.A. 8-286 (habitual violator); K.S.A. 8-1566 (reckless driving); K.S.A. 8-1567 (driving while intoxicated); K.S.A. 8-1568 (fleeing or evading a pursuing police vehicle); or K.S.A. 21-3405 (vehicular homicide).

For purposes of the Uniform Act Regulating Traffic on Highways, as well as the Motor Vehicle Driver's License Act (see K.S.A. 8-234a), the term "suspension of a driver's license" is defined by K.S.A. 8-1474, as follows:

" 'Suspension of a driver's license' means the temporary withdrawal by formal action of the

division of a person's license or privilege to operate a motor vehicle on the highways, which temporary withdrawal shall be for a period specifically designated by the division."

Although suspension may only be accomplished by a specific statutory scheme, this does not answer whether the courts have power to make an order which restricts a minor to operate a motor vehicle in a manner akin to suspension.

K.S.A. 1978 Supp. 38-802 (as amended by L. 1979, ch. 122 § 2) applies directly to this issue and provides in relevant part:

"(c) 'Miscreant child' means a child less than eighteen (18) years of age:

"(1) Who does an act, other than one defined in subsection (e) which if done by a person eighteen (18) years of age or over, would make such person liable to be arrested and prosecuted for the commission of a misdemeanor as defined by K.S.A. 21-3105 or the violation of any city ordinance or county resolution;

. . . .

"(e) 'Traffic offender' means a child under fourteen (14) years of age who does an act which, if done by a person fourteen (14) years of age or over, would make such person liable to be arrested and prosecuted for the violation of the following traffic offenses:

"(1) Any statute relating to the regulation of traffic on the roads, highways or streets, or the operation of self-propelled or non self-propelled vehicles of any kind except K.S.A. 8-262, 8-287, 8-1566, 8-1568 or 21-3405 and K.S.A. 1978 Supp. 8-1567; or

"(2) any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets, or the operation of self-propelled or non self-propelled vehicles of any kind, except when such ordinance or resolution violation would also constitute a violation of K.S.A. 8-262, 8-287, 8-1566, 8-1568 or 21-3405 or K.S.A. 1978 Supp. 8-1567."

In examining K.S.A. 1978 Supp. 38-802(e), we find that a juvenile under fourteen (14) years of age cannot be classified as a "traffic

Mr. James A. Kuharic
Page Three
August 30, 1979

offender" if charged with one of the six serious offenses mentioned in the first paragraph of this opinion. It appears that the legislature also intended to implement a similar distinction for juveniles over fourteen (14) years of age who have been charged with the failure to observe any of the six serious offenses when it alluded to K.S.A. 1978 Supp. 38-802(e) in K.S.A. 1978 Supp. 38-815(b).

K.S.A. 1978 Supp. 38-815 provides for the disposition of a juvenile over fourteen (14) years of age charged with a traffic offense, stating in pertinent part:

"(b) Whenever a child fourteen (14) years of age or older is charged with a traffic offense described in subsection (e) of K.S.A. 1978 Supp. 38-802, the prosecution of such offense shall not be heard pursuant to the juvenile code but shall be commenced in a court of competent jurisdiction in the same manner as prosecutions involving adults, subject to the provisions of K.S.A. 1978 Supp. 8-2117."

These statutes indicate that the framers of the juvenile code intended to implement a singular method of handling any juvenile who is charged with one of the six serious offenses. In determining what this statutory plan is, it is important to note that all six of these serious offenses are classified as misdemeanors, as defined in K.S.A. 21-3105. As a result, a minor accused of violating any of the six serious offenses is denoted miscreant and should be charged as a "miscreant child" in compliance with K.S.A. 1978 Supp. 38-802(c)(1). This results in the juvenile offender becoming amenable to the jurisdiction of the district court for proceedings pursuant to the Kansas juvenile code.

K.S.A. 1978 Supp. 38-826 (as amended by L. 1979, ch. 126, § 1) sets forth the means of disposition that a judge of the district court may employ when determining the post-judgment supervision of the juvenile offender, providing in pertinent part:

"(a) When a child has been adjudged to be a delinquent child or a miscreant child under the provisions of this act, the judge of the district court may make one or more of the following orders:

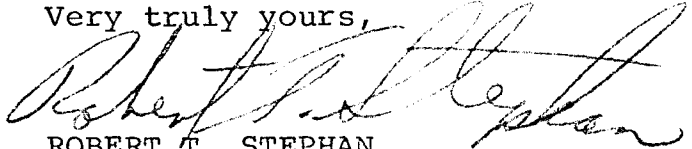
"(1) Place such child on probation in the care, custody and control of either or both parents, subject to such terms and conditions as the court may deem proper, and may make such additional orders directed to the juvenile or the juvenile's parents or both as may be deemed necessary to effectively carry out the probation;

Mr. James A. Kuharic
Page Four
August 30, 1979

.
"(5) place such child, if sixteen (16) years of age or over, in the county jail pending final disposition or on probation on such terms and conditions as the court may deem proper; (Emphasis supplied.)"

When examining K.S.A. 1978 Supp. 38-826, as amended, it is readily apparent that a judge of the district court has broad discretion to apply the conditions deemed necessary to insure a successful period of probation for the "miscreant child." It is our opinion that K.S.A. 1978 Supp. 38-826(a)(1) and (5) provide authority to impose reasonable restrictions on the use by a minor of such minor's drivers license, including prohibiting the operation of a motor vehicle, if deemed necessary by the district court judge to effectively carry out the probation of a miscreant child.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Elsbeth D. Schafer
Assistant Attorney General

RTS:TDH:EDS:sjw