



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

October 12, 1979

ATTORNEY GENERAL OPINION NO. 79- 231

Colonel Allen Rush
Superintendent
Kansas Highway Patrol
Townsite Plaza
Building #2, Suite 130
200 East 6th Street
Topeka, Kansas 66603

Re: Automobiles and Other Vehicles -- Rules of The Road --
"U" Turns on Controlled Access Facilities

Synopsis: Pursuant to K.S.A. 68-1906(2), it is unlawful for the driver of a vehicle to make a "U" turn on a controlled access facility having two or more roadways, unless the vehicle's turning movement is made by crossing between the roadways at a clearly designated crossover and a traffic control device is in place authorizing the same.

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Dear Colonel Rush:

You ask whether it is lawful for a vehicle to make a "U" turn on a controlled access facility by crossing at a clearly designated crossover where no sign prohibits the same.

We interpret your request to refer to those instances where a vehicle changes its direction of travel by "crossing" the dividing section between roadways to the roadway intended to carry traffic in the opposite direction.

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For a clear understanding of the scope of this opinion, it is necessary to distinguish between "roadway" and "highway." K.S.A. 8-1424 defines highway as "the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic." On the other hand, "roadway" as defined in K.S.A. 8-1459, means "that portion of the highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder." Thus, "roadway" refers only to the surface intended for vehicular traffic, whereas "highway" not only includes the roadway, but also encompasses the land contained within the boundary lines of the public right of way.

Pertinent to your question are the provisions of K.S.A. 8-1524 and K.S.A. 68-1906 regarding driving on divided highways.

A "divided highway" is defined in K.S.A. 8-1414 as "a highway divided into two (2) or more roadways by leaving an intervening space or by a physical barrier or by a clearly indicated dividing section so constructed as to impede vehicular traffic." K.S.A. 8-1524 expressly applies to those highways defined in K.S.A. 8-1414, providing thus:

"Whenever any highway has been divided into two (2) or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a cross-over or intersection as established, unless specifically prohibited by public authority." (Emphasis added.)

However, K.S.A. 68-1906, which enumerates prohibited acts on controlled access facilities, also encompasses roadways which are separated by an intervening space or barrier. Subsection (2) thereof makes it unlawful for any person

"to make a left turn or a semicircular or "U" turn except through an opening provided for that purpose in the dividing curb section, separation or line, and clearly designated by sign as an opening provided for the purpose of public use for such turning movement. . . ."

K.S.A. 68-1906(2) refers to a controlled access facility with a "dividing curb section, separation or line" and also assumes the necessity of an "opening" to traverse whatever barrier is between on-coming traffic lanes and the motorist. We believe the conditions outlined in K.S.A. 8-1524 and 68-1906(2) are similar in that both statutes regulate driving privileges on "divided highways" as defined in K.S.A. 8-1414.

The crucial distinction lies in the scope of the statutes regulating conduct on divided highways. K.S.A. 68-1906(2) is included with other statutes in Chapter 68 of the Kansas Statutes Annotated which set forth the statutory provisions relative to "controlled access facilities," defined in K.S.A. 1978 Supp. 68-1901, thus:

" 'A controlled access facility' means a highway, road or street especially designed to expedite and control through and local traffic, and over, from or to which highway, road or street, owners or occupants of abutting property shall have only a controlled right or easement of access, light, air or view. Such highways, roads or streets may be opened to use by all customary forms of street and highway traffic, or they may be parkways from which designated vehicles shall be excluded."

The prohibition of K.S.A. 68-1906 regulates only controlled access facilities. By the ordinary meaning of the words used in K.S.A. 68-1906(2), the statute refers to a highway which contains two or more roadways separated by a curb, separation or line. Therefore, where a controlled access facility contains separated roadways, K.S.A. 68-1906(2) regulates activity thereon. However, K.S.A. 8-1524 refers to all divided highways, which may be, but are not always, controlled access facilities.

It is noted there is a conflict between the provisions of K.S.A. 8-1524 and 68-1906(2). K.S.A. 8-1524 allows vehicles to be driven through an opening in the dividing section "unless specifically prohibited by public authority." (Emphasis added) However, K.S.A. 68-1906(2) provides a clearly different standard. It also allows vehicles to be driven "through an opening provided for that purpose in the dividing curb section, separation or line, and clearly designated by a sign as an opening provided for the purpose of public use for such turning movement." (Emphasis added) Thus, before one may legally "U" turn under K.S.A. 68-1906(2), there must be an opening and a sign allowing passage through the opening. Thus, pursuant to this statute,

such sign is a precondition to legal use of the opening for a "U" turn. K.S.A. 8-1524, on the other hand, would allow use of the opening in the absence of the sign. The statutes obviously compete.

When two or more statutes govern the same class, the court will strive to apply each to its fullest extent, yet avoid conflicting rules within identical classes. In State v. Makin, 223 Kan. 743 (1978), the court states:

"Repeals by implication are never favored and a general and specific statute should be read together and harmonized whenever possible. But to the extent of repugnancy between a statute dealing generally with a subject and another statute dealing specifically with a subject, the specific statute is favored and controls." (Citations omitted)
Id. at 745.

When conflicts do occur, the rules of statutory construction provide guidance.

"Where there appears to be a conflict between a statute dealing generally with a subject and another statute dealing specifically with a certain phase of the subject, the specific statute will be favored over the general statute and controls." Thomas v. Board of Trustees of Salem Township, 224 Kan. 539 (1978).

The scheme embodied in K.S.A. 68-1906(2) fits the mold of a specific statute. While K.S.A. 8-1524 applies to all divided highways, K.S.A. 68-1906(2) applies only to those divided highways which concurrently are controlled access facilities. Because K.S.A. 68-1906(2) regulates a sub-class of divided highways, it will control where the restrictive conditions are met. Thus, in our opinion, where there is a controlled access facility having two or more separate roadways and meeting both K.S.A. 8-1414 and 68-1906(a) definitions, there must be a sign clearly designating an opening for public use before a motorist is authorized to use such opening for any turning movement.

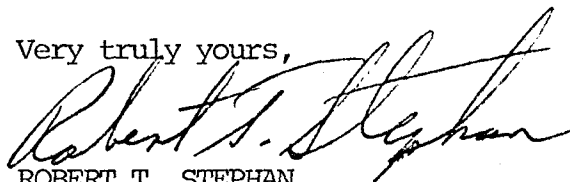
It should be noted that K.S.A. 1978 Supp. 8-1506 provides a limited exception to K.S.A. 68-1906, as well as other rules of the road. K.S.A. 8-1506 exempts an emergency vehicle driver when responding to an emergency call or in pursuit of an actual or suspected violator of the law. Subsection (c) imposes additional conditions.

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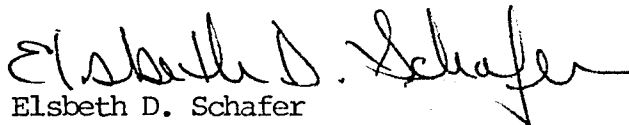
"(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of an audible signal meeting the requirements of K.S.A. 8-1738 and visual signals meeting the requirements of K.S.A. 8-1720, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle."

If all of the above restrictions are observed, subsection (b) (5) of 8-1506 allows the driver of an authorized emergency vehicle to "disregard regulations governing direction of movement or turning in specified directions." It is our opinion that a vehicle responding to an emergency call in compliance with K.S.A. 8-1506(a) and (c) would be exempt from K.S.A. 68-1906(2) penalties.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Elsbeth D. Schafer
Assistant Attorney General

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