



STATE OF KANSAS

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January 21, 1983

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ATTORNEY GENERAL OPINION NO. 83- 8

Charles V. Hamm
General Counsel
Legal Division
Department of Social and
Rehabilitation Services
State Office Building
Topeka, Kansas 66612

Re: Automobiles and Other Vehicles--Serious Traffic
Offenses--Driving While Under Influence of Alcohol

Synopsis: Section 10 of L. 1982, Ch. 144 requires the secretary of social and rehabilitation services to establish a state alcohol and drug safety action program (ADSAP). The state ADSAP is funded through an assessment of \$85 upon each person who is convicted of, pleads nolo contendere to, or participates in a diversion program as a result of, a violation of K.S.A. 1981 Supp. 8-1567. Moneys in the fund may be expended for a variety of services specified by statute, including pre-sentence evaluations, and supervision and monitoring subsequent to sentencing, of persons convicted of or pleading nolo contendere to a violation. As a person participating in a diversion program does not fall into either of the above categories, the secretary is without authority to expend moneys from the fund on evaluations for such individuals who have not actually been convicted or pled nolo contendere. However, assessment funds can be used to pay, in full or in part, the cost of any alcohol treatment and/or education program required by the diversion agreement. Cited herein: K.S.A. 1981 Supp. 8-1567, as amended by L. 1982, ch. 144, §10, L. 1982, ch. 144, §§7, 15.

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Dear Mr. Hamm:

As General Counsel for the State Department of Social and Rehabilitation Services, you request our opinion on a question involving amendments made in the last legislative session to K.S.A. 1981 Supp. 8-1567 and related statutes, concerning the offense of operating a vehicle while under the influence of alcohol. The amendments were contained in 1982 Senate Bill No. 699, which has been included in the session laws as L. 1982, ch. 144. Specifically, you inquire as to whether the secretary of SRS may expend moneys from the newly-created state alcohol and drug safety action program (ADSAP) fund for post-arrest, as well as pre-conviction, evaluations of violators.

In Section 10 of the bill, the legislature has created the ADSAP program, which is placed under the control of the secretary of SRS. The purpose of the program is set forth at subsection (a), and includes the certification of community-based ADSAPs which may provide the following services:

"(1) presentence alcohol and drug evaluations of any person who pleads nolo contendere to or is convicted of a violation of K.S.A. 1981 Supp. 8-1567 and amendments thereto, (2) supervision and monitoring of all persons who plead nolo contendere to or are convicted of a violation of K.S.A. 1981 Supp. 8-1567 and amendments thereto and whose sentences or terms of probation require completion of an alcohol and drug safety action program, as provided in this section, or an alcohol and drug abuse treatment program, as provided in this section, or (3) any combination of (1) and all or part of (2). An alcohol and drug safety action program may include such components as are provided by the secretary of social and rehabilitation services." (Emphasis added.)

The state ADSAP program, and through it the community-based efforts, are funded by the imposition of an \$85 "assessment" against any person who is convicted of, or pleads nolo contendere to, a violation of K.S.A. 1981 Supp. 8-1567, as amended [L. 1982, ch. 144, §10(d)]. At section 7(c)(1), it is further provided that all first-time offenders who enter into a diversion agreement with a district or county attorney must also pay this assessment. A similar provision exists for diversions pursuant to a municipal ordinance [at section 15(b)(1)]. A participant in such a diversion agreement must also enroll in and successfully complete an ADSAP program, a treatment program or both, which are offered by the community-based program. §§7(c)(2), 15(b)(2).

All of the assessments required by the various sections are collected by the clerk of the court, and are sent on a monthly basis to the state treasurer for deposit in the state ADSAP fund. [L. 1982, ch. 144, §10(d).] Such moneys can then be expended by the secretary only for the administration of the state ADSAP and paying the costs for the provision of the services specified by subsection (a) [of section (10)] by community-based ADSAPs. As noted above, at present subsection (a) refers only to pre-sentence evaluations of violators who have been convicted or who have entered a plea of nolo contendere, or to post-sentence monitoring of such a violator who is participating in an ADSAP program. While this section does not preclude a community-based ADSAP from also conducting evaluations of those who are considered for, or who have entered into, diversion agreements, as it now reads the secretary does not have the authority to expend state ADSAP funds for such evaluations, however helpful they would be in the process of determining who is a proper candidate for diversion.

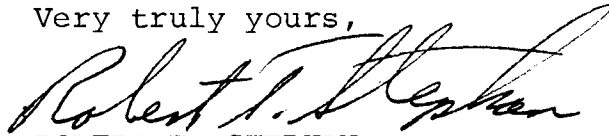
However, in our opinion this does not mean that the \$85 assessment paid by a person entering a diversion program is simply forfeited. As mentioned previously, such individuals must participate in education and/or treatment programs, offered by the community-based ADSAP. Section 10(c) provides that the cost of such programs must be borne by the individual involved, but that these costs shall include the assessments paid-in to the state ADSAP fund. Accordingly, if a local ADSAP provides services to persons in diversion programs, it may be reimbursed by the secretary from the state ADSAP fund. Section 10(d) provides for this by authorizing the secretary to "contract as may be necessary to carry out the provisions of this act," which would include the educational/treatment requirement for those persons in diversion.

In conclusion, Section 10 of L. 1982, Ch. 144 requires the secretary of social and rehabilitation services to establish a state alcohol and drug safety action program (ADSAP). The state ADSAP is funded through an assessment of \$85 upon each person who is convicted of, pleads nolo contendere to, or participates in a diversion program as a result of, a violation of K.S.A. 1981 Supp. 8-1567, as amended. Moneys in the fund may be expended for a variety of services specified by statute, including pre-sentence evaluations, and supervision and monitoring subsequent to sentencing, of persons convicted of or pleading nolo contendere to a violation. As a person participating in a diversion program does not fall into either of the above categories, the secretary is without authority to expend moneys from the fund on evaluations for such individuals who have not

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actually been convicted or pled nolo contendere. However, assessment funds can be used to pay, in full or in part, the cost of any alcohol treatment and/or education program required by the diversion agreement.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:jm