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ATTORNEY GENERAL OPINION NO. 83- 83

Max E. Scribner
Chief of Police
14 West Central
Caldwell, Kansas 67022

Re: Automobiles and Other Vehicles -- Drivers Licenses -- Restricted Drivers Licenses; School Attendance.

Synopsis: K.S.A. 8-237 permits the holder of a restricted drivers license between the age of 14 and 16 to operate a motor vehicle on days while school is in session over the most direct and accessible route between the licensee's residence and school of enrollment for the purpose of school attendance.

The term "school attendance" has a narrower meaning than "school activities;" therefore, the holder of a restricted license is not permitted by this statute to operate a motor vehicle for transportation to mere school activities. Cited herein: K.S.A. 8-237(a)(2), 72-133, 72-1113, 72-8302, 72-8305.

* * *

Dear Chief Scribner:

As the Chief of Police of Caldwell, Kansas, you have requested our opinion as to whether an individual having a restricted drivers license may drive to and from school activities such as football games, school plays and other extracurricular school functions.

K.S.A. 8-237 provides in part:

> "A restricted class C license issued under this subsection shall entitle the licensee, while possessing the license, to operate any motor vehicle in class C, as designated in K.S.A. 8-2346. A restricted class D license shall entitle the licensee, while possessing such license, to operate a motorcycle. The restricted license shall entitle the licensee to operate the appropriate vehicle at any time:
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> . . . .
>
> "(2) on days while school is in session, over the most direct and accessible route between the licensee's residence and school of enrollment for the purpose of school attendance." (Emphasis supplied.)

In our judgment, by using the term "school attendance," the legislature has expressed its will that driving privileges not be extended to situations involving extracurricular activities. Turning to the laws governing Kansas schools, we find that K.S.A. 72-133 defines "activities" as "school activities and contests in the field of athletics, music, forensics, dramatics and any other interschool extracurricular activities by students enrolled in any of the grades from seven (7) to twelve (12), inclusive." A distinction between school attendance and school activities is recognized by K.S.A. 1982 Supp. 72-8302(a) which mandates transportation of students living outside certain radii of the school attended, while, K.S.A. 1982 Supp. 72-8302(b) and K.S.A. 72-8305 authorize, but not require, schools to provide transportation for extracurricular activities.

In construing the scope of the term "school attendance" we are guided by familiar rules of statutory construction. As noted in Johnson v. McArthur, 226 Kan. 128 (1979):

> "The fundamental rule of statutory construction, to which all other rules are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes. When a statute is plain and unambiguous the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. Thomas County Taxpayers Ass'n v. Finney, 223 Kan. 434, 573 P.2d 1073 (1978)." 226 Kan. at 135.

In giving effect to the intent of the legislature, courts "must consider the language of the statute; its words are to be understood in their plain and ordinary sense." Lakeview Gardens, Inc. v. State, ex rel, Schneider, 221 Kan. 211, 214 (1976). Moreover, it is not the function of the courts to expand or broaden the plain letter of a statute. State v. One Bally Coney Island No. 21011 Gaming Table, 174 Kan. 757, Syl. para. 2 (1953). Finally, and of particular pertinence here, we note the following statement of the Court in Rogers v. Shanahan, 221 Kan. 221 (1977):

> "When . . . the resolution of a question requires construing a statute, the court is guided by certain presumptions. It is presumed the legislature understood the meaning of the words it used and intended to use them; that the legislature used the words in their ordinary and common meaning; and that the legislature intended a different meaning when it used different language in the same connection in different parts of a statute. See 82 C.J.S. Statutes, §316(b) (1953); See also, Rausch v. Hill, 164 Kan. 505, 190 P.2d 357." (Emphasis supplied.) Id. at 223, 224.

Had the legislature intended to authorize restricted licensees to drive to and from extracurricular activities, they could easily have done so by including language to that effect. Thus, it is our opinion that a restricted license entitles the licensee to operate a motor vehicle to and from the licensee's school of enrollment for the purpose of school attendance only. As such, we conclude that K.S.A. 8-237 does not authorize a licensee to drive to and from extracurricular activities such as football games, school plays, etc. As a practical matter we note that many school activities commence immediately after classes are dismissed. This opinion should not be construed as prohibiting restricted licensee's from driving the most direct and accessible route between the school of enrollment and the licensee's residence upon completion of such activities.

Very truly yours,

Robert T. Stephan

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