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ATTORNEY GENERAL OPINION NO. 83- 117

The Honorable David J. Heinemann
State Representative, One Hundred Twenty-Third District
2606 Carriage Lane
Garden City, Kansas 67846

Re: Laws, Journals and Public Information -- Records
 Open to Public -- Conviction Records of Certain
 Traffic Offenses; Closed to Public

Automobiles and Other Vehicles -- Miscellaneous
Provisions -- Maximum Speed Limits; Public Access
to Records of Conviction

Synopsis: Senate Bill No. 310, enacted by the 1983 Kansas
 Legislature, provides that speeding convictions
 for traveling not more than 10 miles per hour in
 excess of the 55 m.p.h. speed limit established
 by K.S.A. 8-1336(a)(3) shall not be part of the
 public record and shall not be considered by any
 insurance company in establishing rates for an
 automobile liability insurance policy or cancel-
 ing such coverage.

Information concerning such convictions, made con-
fidential by the 1983 law, must be deleted by the
official custodian from otherwise disclosable
agency or court records. 1983 Senate Bill No. 310
operates prospectively only and does not close
records of convictions prior to July 1, 1983.
Nor does the bill require any change in traditional
rights of public access to court proceedings, or
close records relating to the payment of fines
for such offenses or the issuance of citations,
summons or warrants. Cited herein: 1983 Senate
Bill No. 310 (L. 1983, ch. 28), K.S.A. 1982 Supp.
45-201, K.S.A. 8-1336(a)(3).

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Dear Representative Heinemann:

As State Representative of the One Hundred, Twenty-Third District and on behalf of Diana Jones, Chief Clerk of the Twenty-Fifth Judicial District, you have requested our opinion on certain questions raised by 1983 Senate Bill No. 310 (L. 1983, Ch. 28). The bill provides in relevant part:

"Section 1. Convictions under subsection (a)(3) of K.S.A. 8-1336 and amendments thereto for not more than 10 miles per hour in excess of the maximum speed limit shall not be a part of the public record and shall not be considered by any insurance company in determining the rate charged for any automobile liability insurance policy or whether to cancel any such policy under the provisions of subsection (7)(c) of K.S.A. 40-277 and amendments thereto."

The questions you raise concerning Senate Bill No. 310 may be stated as follows: 1) Does the bill require that convictions covered by its terms be deleted from an otherwise disclosable record; 2) does the bill prohibit public docket calls for traffic offenses and require that trials for the covered offenses be closed; 3) does the bill require that local courts alter their receipting procedures for these particular traffic fines; 4) does the bill require special precautions when warrants are issued in covered cases; and 5) does the bill have retroactive application?

A response to your inquiries necessitates a brief review of the statutes and case law applicable to public records in Kansas. The Kansas Public Records Act, K.S.A. 1982 Supp. 45-201 et seq., provides that all official public records, which are required by law to be kept and maintained, shall be open for inspection by any citizen. However, the Act itself provides that five separate categories of official records are exempt from this requirement, including "records specifically closed by law or by directive authorized by law." K.S.A. 1982 Supp. 45-201(b)(5). 1983 Senate Bill No. 310 specifically closes certain records and thus falls within this statutory exception. Also exempt from the public records law are records of district court proceedings conducted pursuant to the Kansas juvenile code. K.S.A. 1982 Supp. 45-201(b)(2).

There seems to be little question that the Kansas legislature has authority to close certain court records. In a case involving the question of public access to records of criminal convictions, the Kansas Supreme Court recognized that the legislature has the authority to provide for restrictions

on public access to such records. See Stephens v. Van Arsdale, 227 Kan. 676 (1980). In State v. Stauffer Communications, 225 Kan. 540 (1979), the Court acknowledged the power of the legislature, not only to compel the opening of official records, but also to restrict access to official documents. In this context we now examine the scope of 1983 Senate Bill No. 310.

First, it is clear from the language of the bill that it applies only to records of convictions for violations of K.S.A. 8-1336(a)(3), which establishes the 55 mile per hour speed limit mandated by the United States Congress. Nothing in this act restricts public access to records of traffic convictions for violations of other laws or ordinances. Such records remain open to public inspection. Moreover, although Senate Bill No. 310 restricts public access to records of conviction for the offense of speeding between 55 and 64 miles per hour; other information, mingled with such conviction records which is otherwise public, must be disclosed upon request. The Kansas Supreme Court has approved such partial deletions and, in fact, has held that K.S.A. 1982 Supp. 45-201 impliedly places a duty upon the custodian of official records "to delete confidential and nondisclosable information from that which may be disclosed, and thus to carry out the act's [Kansas Public Records Act] purpose of making available for public inspection all disclosable parts of the public record." State ex rel. Stephan v. Harder, 230 Kan. 573, 583 (1982).

The second, third and fourth inquiries of your request all involve the effect of Senate Bill No. 310 on local court procedures. These inquiries may be answered by reference to the language of the bill itself which does not require, in our opinion, that court proceedings leading to such convictions be closed to the public. Nor is the bill so broadly drafted as to require any modifications of local court procedures in traffic matters such as public docket calls, receipting procedures for payment of traffic fines or in the issuance of citations, summons or warrants. In our judgment, 1983 Senate Bill No. 310 is designed to prevent insurance companies from using certain conviction records in rate and coverage determinations. The bill accomplishes this purpose by restricting access to the official records of such convictions at the state and local level. However, the bill does not provide for an absolute bar to public knowledge of law enforcement endeavors or judicial proceedings leading up to the production of the conviction record.

Your final question asks whether 1983 Senate Bill No. 310, which became effective July 1, 1983, will have retroactive application. There is no language in the bill indicating that it should be given retroactive application. Kansas

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courts accept the general rule of statutory construction that a statute will operate prospectively unless its language clearly indicates that the legislature intended that it operate retroactively. See Nitchals v. Williams, 225 Kan. 285, 290 (1979); Eakes v. Hoffman La Roche, Inc., 220 Kan. 565, 568 (1976); Ellis v. Kroger Grocery Co., 159 Kan. 213, 217 (1944). The language of 1983 Senate Bill No. 310 does not clearly evince an intent that it operate retroactively and we can see little purpose in such expansion of the new law since the records in question have already been exposed to the light of public scrutiny. It is thus our opinion that only speeding convictions covered by the bill which occur after July 1, 1983, will be affected.

Therefore, in our opinion, Senate Bill No. 310, enacted by the 1983 Kansas Legislature, provides that speeding convictions for traveling not more than 10 miles per hour in excess of the 55 m.p.h. speed limit established by K.S.A. 8-1336(a)(3) shall not be part of the public record and shall not be considered by any insurance company in establishing rates for an automobile liability insurance policy or canceling such coverage. Information concerning such convictions, made confidential by the 1983 law, must be deleted by the official custodian from otherwise disclosable agency or court records. 1983 Senate Bill No. 310 operates prospectively only and does not close records of convictions prior to July 1, 1983. Nor does the bill require any change in traditional rights of public access to court proceedings, or close records relating to the payment of fines for such offenses or the issuance of citations, summons or warrants.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
Assistant Attorney General

RTS:BJS:MFC:hle