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December 30, 1983

ATTORNEY GENERAL OPINION NO. 83-185

The Honorable Roy M. Ehrlich
State Senator, Thirty-Fifth District
Route 1, Box 92
Hoisington, Kansas 67544

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

Amendments to the United States Constitution -- Rights and Immunities of Citizens -- Fourteenth Amendment; Equal Protection

Constitution of the State of Kansas -- Bill of Rights -- Equal Rights

Synopsis: 1983 Senate Bill No. 310 (L. 1983, ch. 28) provides that speeding convictions for traveling not more than 10 miles per hour in excess of the 55 mile per hour 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 cancelling such coverage. The classification of accessible records created by 1983 Senate Bill No. 310 bears a reasonable relationship to a legitimate legislative function and does not offend the guarantees of equal protection found in the United States and Kansas constitutions. Cited herein: 1983 Senate Bill No. 310 (L. 1983, ch. 28), Kan. Const., Bill of Rights §§1, 2, U.S. Const., Fourteenth Amendment.

* * *

Dear Senator Ehrlich:

You request our opinion on certain constitutional questions with regard to 1983 Senate Bill No. 310. Your specific question raises the issue of whether the bill violates constitutional equal protection guarantees because it "treats speeding

convictions for traveling not more than 10 miles per hour in excess of the maximum 55 mile per hour speed limit . . . different(ly) from other speeding convictions."

1983 Senate Bill No. 310 (L. 1983, ch. 28) provides that speeding convictions for traveling not more than 10 miles per hour in excess of the 55 mile per hour 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 cancelling such coverage. As noted in Attorney General Opinion No. 83-117, 1983 Senate Bill No. 310 appears to be designed solely to prevent insurance companies from using certain conviction records in rate and coverage determinations. To accomplish that purpose the bill restricts access to the official records of such convictions at the state and local level. It does not appear to us that, in accomplishing this purpose, the bill offends the equal protection guarantee of the Fourteenth Amendment to the United States constitution.

A brief review of the general rules applicable to equal protection challenges to legislative enactments will illustrate this point. The Fourteenth Amendment to the federal constitution prevents the states of the union from denying to any person within their jurisdiction the equal protection of the laws. The Kansas Supreme Court has held that the provisions of the Kansas Constitution declaring that all men are possessed of equal and inalienable natural rights and that all free governments are instituted for the equal protection and benefit of the people are the Kansas counterparts to the equal protection guarantees found in the Fourteenth Amendment. Kan. Const., Bill of Rights §§1,2; Stephens v. Synder Clinic Association, 230 Kan. 115 (1981).

The equal protection guarantee found in the Kansas and Federal Constitutions does not prevent classification of persons and objects for the purpose of legislation. A state legislature does not violate equal protection simply by classifying persons so that some are affected by legislation or regulation differently than others. In State ex rel. Schneider v. Liggett, 223 Kan. 610, 616 (1978), the court discussed the tests to be utilized in equal protection analysis.

> "Traditionally, the yardstick for measuring equal protection arguments has been the 'reasonable basis' test. The standard was set forth in McGowan v. Maryland, 366 U.S. 420, 425-26, 6 L.Ed.2d 393, 81 S.Ct. 1101:

"'. . . The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. . . .'

"In Dandridge v. Williams, 397 U.S. 471, 25 L.Ed.2d 491, 90 S.Ct. 1153, reh. denied 398 U.S. 914, 26 L.Ed.2d 80, 90 S.Ct. 1684, it was stated:

"'. . . If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78. . . .' (p. 485.)

. . . .

"A more stringent test has emerged, however, in cases involving 'suspect classifications' or 'fundamental interests.' Here the courts peel away the protective presumption of constitutionality and adopt an attitude of active and critical analysis, subjecting the classification to strict scrutiny. The burden of proof to justify the classification falls upon the state (See, Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600, 89 S.Ct. 1322.) This test has been used to strike down classifications based on race (Loving v. Virginia, 388 U.S. 1, 18 L.Ed.2d 1010, 87 S.Ct. 1817); sex (Reed v. Reed, 404 U.S. 71, 30 L.Ed.2d 225, 92 S.Ct. 251); ethnic background (Katzenbach v. Morgan, 384 U.S. 641, 16 L.Ed. 2d 828, 86 S.Ct. 1717); residency (Shapiro v. Thompson, supra); alienage (Sugarman v. Dougall, 413 U.S. 634, 37 L.Ed.2d 853, 93 S.Ct. 2842; Graham v. Richardson, 403 U.S. 365, 29 L.Ed. 2d 534, 91 S.Ct. 1848); and infringements of fundamental rights, such as the right to travel freely (Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed.2d 274, 92 S.Ct. 995; Aptheker v. Secretary of State, 378 U.S. 500, 12 L.Ed. 2d 992, 84 S.Ct. 1659) or to practice one's

> religion (Sherbert v. Verner, 374 U.S. 398, 10 L.Ed.2d 965, 83 S.Ct. 1790)." See also Manhattan Buildings, Inc. v. Hurley, 231 Kan. 20, 30 (1982).

It is clear to us that Senate Bill No. 310 does not burden any recognized fundamental interests or produce a "suspect classification" by restricting access to records of certain speeding convictions. Under an equal protection analysis, the bill should be subject to the reasonable basis test discussed in the above quoted material. Legislative classifications which offend equal protecton under the test are those which are arbitary and which bear no reasonable relationship to the accomplishment of a legitimate state purpose. As recognized in Attorney General Opinion No. 83-117, the courts have acknowledged the legitimate power of the legislature to restrict access to official records and documents, including access to records of certain criminal convictions. See Stephens v. Van Arsdale, 227 Kan. 676 (1980). Senate Bill No. 310 restricts access official documents for the purpose of preventing insurance companies from using the documents in rate and coverage determinations. The bill does not create a class of individuals whom the state treats differently with regard to a speeding conviction. It does not discriminate with regard to the state imposed sanctions which are attendant to a speeding conviction. Senate Bill No. 310 creates a classification which affects only the records of speeding convictions. Thus the persons affected by the bill are those who may wish to have access to the records. The bill restricts access to all persons and thus does not discriminate in its effect upon those who would seek access to such records. As noted above, the legislature may restrict access to such records when it determines that such restrictions are prudent. For the purposes which the bill is obviously intended, it appears that the classification created by the legislation does not violate the equal protection guarantees of the United States and Kansas Constitutions.

In conclusion, we note that 1983 Senate Bill No. 310 (L. 1983, ch. 28) provides that speeding convictions for traveling not more than 10 miles per hour in excess of the 55 mile per hour 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 cancelling such coverage. The classification of accessible records created by 1983 Senate Bill No. 310 bears a reasonable relationship to a legitimate legislative function and does not offend the

guarantees of equal protection found in the United States and Kansas constitutions.

Very truly yours,

ROBERT T. STEPHAN
Attorney General

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RTS:BJS:MFC:hle