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June 17, 1985

ATTORNEY GENERAL OPINION NO. 85- 66

Charles H. Apt  
Apt & Apt  
104 South Washington  
P.O. Box 328  
Iola, Kansas 66749

Re: Automobiles and Other Vehicles -- Act Regulating  
Traffic; Arrests, Citations, Penalties -- Failure  
to Comply With Citation; Suspension of License

Synopsis: Prior to enactment of 1985 House Bill No. 2451, a driver's failure to appear before a municipal court could not, in the absence of a bench warrant under K.S.A. 12-4301, result in suspension of his or her license by the Division of Vehicles of the Department of Revenue. However, provisions of the bill amend K.S.A. 1984 Supp. 8-2110 to now provide for such suspension after a failure to appear before either a district or a municipal court. Attorney General Opinion No. 84-43, which was issued prior to the amendment of K.S.A. 1984 Supp. 8-2110, is hereby withdrawn. Cited herein: K.S.A. 1984 Supp. 8-2110, as amended by 1985 House Bill No. 2451; K.S.A. 1984 Supp. 12-4205; K.S.A. 12-4301.

\* \* \*

Dear Mr. Apt:

As City Attorney for Iola, Kansas, you request our opinion on a question concerning persons who have failed to appear pursuant to traffic citations issued by the city police. Specifically, you inquire if the municipal court is authorized to forward the names of such a person to the Division of Vehicles of the Kansas

Department of Revenue in order to have his or her license to drive suspended so as to force compliance with the notice to appear, which is included in the citation.

This question was earlier addressed in Attorney General Opinion No. 84-43, a copy of which is enclosed for your reference. There, it was our conclusion that a municipal court did not possess the power to notify the division of vehicles in the event a person did not appear before the court as required by the Notice to Appear contained in a traffic citation. K.S.A. 1984 Supp. 12-4205. In reviewing the statutes as they existed at that time (May 30, 1984), the opinion noted that while certain procedures existed by which licenses could be forwarded to the division [as where a person had been required to deposit his or her license with a police officer following delivery of a bench warrant for a previous failure to appear, K.S.A. 12-4301(d)], in general this could not be done. By way of contrast, provisions in the Uniform Act Regulating Traffic, K.S.A. 8-2101 et seq., specifically provided for such suspension proceedings following a failure to appear. K.S.A. 1984 Supp. 8-2110 (now amended by 1985 House Bill No. 2451).

The opinion concluded as follows:

"We would agree with your conclusion that the above [i.e. seizure of a license following a failure to appear under K.S.A. 12-4301] represents the only procedure in the Code by which a person's license can be suspended by reason of their failure to appear following the issuance of a complaint and notice to appear. While K.S.A. 8-2110 sets forth a procedure for suspension in the event a driver fails to appear following the issuance of a citation under the Uniform Act, in our opinion such requirements cannot be read into the Code, which is an entirely different act. While this is not to say that such a requirement could not be added by legislative amendment to the Code, or, alternatively, reference made to municipal courts in K.S.A. 8-2110, we are not prepared to read in by inference that which is not contained in the statutes."

Perhaps in response to the suggestion contained in the above-quoted section of the opinion, the 1985 Kansas Legislature did amend K.S.A. 1984 Supp. 8-2110 to include municipal courts. Further, an express procedure for license suspension was set out.

As amended by 1985 House Bill No. 2451, the statute now reads in pertinent part:

"(a) Failure to comply with a traffic citation means failure either to (1) appear before any district or municipal court in response to a traffic citation and pay in full any fine and court costs imposed or (2) otherwise comply with a traffic citation as provided in K.S.A. 1984 Supp. 8-2118 and amendments thereto. Failure to comply with a traffic citation is a misdemeanor, regardless of the disposition of the charge for which such citation was originally issued.

"(b) In addition to penalties of law applicable under subsection (a), when a person fails to comply with a traffic citation, except for illegal parking, standing or stopping, the district or municipal court in which the person should have complied with the citation shall mail notice to the person that if the person does not appear in district or municipal court or pay all fines, court costs and any penalties within 30 days from the date of mailing, the division of vehicles will be notified to suspend the person's driving privileges. Upon the person's failure to comply within such 30 days, the district or municipal court shall notify the division of vehicles. Upon receipt of a report of a failure to comply with a traffic citation under this subsection, pursuant to K.S.A. 8-255, and amendments thereto, the division of vehicles shall notify the violator and suspend the license of the violator until satisfactory evidence of compliance with the terms of the traffic citation has been furnished the informing court. Upon such compliance the informing court shall notify the division of vehicles and the suspension or suspension action shall be terminated."

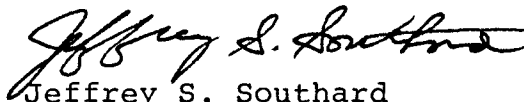
The effective date of the bill was May 16, 1985, the day which it was published in the Kansas Register. As a result of this legislative action, the conclusion reached in Opinion No. 84-43 no longer reflects the statutory language which is now in force, and should not henceforth be relied upon.

In conclusion, prior to enactment of 1985 House Bill No. 2451, a driver's failure to appear before a municipal court could not, in the absence of a bench warrant under K.S.A. 12-4301, result in suspension of his or her license by the Division of Vehicles of the Department of Revenue. However, provisions of the bill amend K.S.A. 1984 Supp. 8-2110 to now provide for such suspension after a failure to appear before either a district or a municipal court. Attorney General Opinion No. 84-43, which was issued prior to the amendment of K.S.A. 1984 Supp. 8-2110, is hereby withdrawn.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Deputy Attorney General

RTS:JSS:crw  
Enclosure