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ATTORNEY GENERAL OPINION NO. 86- 95

The Honorable Henry M. Helgerson, Jr.  
State Representative, Eighty-Sixth District  
4009 Hammond Drive  
Wichita, Kansas 67218

Re: Automobiles and Other Vehicles--Miscellaneous  
Provisions--Kansas Safety Belt Use Act

Synopsis: The purpose of the Safety Belt Use Act is to educate rather than punish. However, law enforcement officers should not be constrained from enforcing the act within the bounds of its provisions. When an officer can articulate facts which would lead a cautious person to believe that a violation has occurred, a citation may then issue. Drivers are not to be cited for violations committed by passengers. Any person 10 or more years of age may be held responsible for failure to fasten their safety belt. Cited herein: K.S.A. 1985 Supp. 8-1344; 8-1345; K.S.A. 8-2101; K.S.A. 1985 Supp. 21-3105; 38-1602, K.S.A. 41-2719; L. 1986, ch. 35, §§3, 4.

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Dear Representative Helgerson:

You have requested our opinion regarding the Kansas Safety Belt Use Act, L. 1986, ch. 35. Specifically, you inquire into matters pertaining to citation procedures as well as a driver's responsibility for violations of the act committed by his passenger(s).

In response to your query regarding what observations an officer must make before issuing a citation, we note that enforcement must reflect the act's legislative history and purpose. The Kansas Safety Belt Use Act originated as S.B. 520, died in house committee, and was reintroduced as H.B. 3160, with amendments not pertinent to your inquiry. The purpose of the law is to educate rather than punish motorists. Bob W. Storey, proponent of S.B. 520 and representing Traffic Safety Now, a non-profit corporation, testified in the Committee on Transportation and Utility hearings:

"Bear in mind here that the purpose of this law is not to punish people for not wearing safety belts, but to make them aware of the importance of a safety-belt law, and to educate adults and minors to use their safety belts at all times while operating a vehicle."  
Comm. Trans. and Util., minutes,  
February 13, 1986, Att. 1, p.8.

This legislative purpose is evident in the provisions of the law as enacted. The secretary of transportation is to initiate an educational program to encourage safety belt usage. L. 1986, ch. 35, §3(c). Also, the enforcement procedures of the act are secondary to other offenses. L. 1986, ch. 35, §3(e) states in relevant part:

"Law enforcement officers shall not stop drivers for violations of this act in the absence of another violation of law."

This section further provides that a citation must be issued for the primary violation before a citation for violating the safety belt use act may be issued. This legislative purpose of educating motorists to use safety belts should be taken into consideration by law enforcement officers.

A violation of the act occurs when a front seat occupant of a passenger vehicle which was manufactured with safety belts fails to have a safety belt properly fastened about the person's body at all times while the vehicle is in motion. L. 1986, ch. 35, §3(a). Until July 1, 1987, officers are to issue warning citations for violations of the act. After that date, violators are subject to fines of up to \$10 including court costs.

It is our opinion that a citation may be issued in the officer's discretion when facts can be articulated which would lead a reasonable and prudent person to believe that an occupant was in violation of the act. Your concern regarding motorists who buckle up or unbuckle prior to an officer approaching the vehicle can only be dealt with on a case-by-case basis. Controversies of whether or not the person was wearing the safety belt while the vehicle was in motion become questions of fact. In short, law enforcement officers should not be constrained from issuing citations within the provisions of the act.

You have also requested our opinion regarding to whom a citation is to be issued when a passenger is in violation of the act. There is no question that a passenger may be issued a citation for failing to have a safety belt properly fastened about the body while the vehicle is in motion. The statute provides in relevant part:

"[P]ersons violating subsection (a) of section 3 shall be fined not more than \$10 including court costs." L. 1986, ch. 35, §4(a)(2).

A more difficult question arises, however, in determining whether or not a driver is also responsible for a passenger's violation. Applying rules of strict construction, there is no statutory authority for issuing citations to drivers for passengers' violations of the act. In State v. Thompson, 237 Kan. 562 (1985), it was noted that in strictly construing penal statutes, "[t]he statute should not be read to add that which is not readily found therein or to read out what, as a matter of ordinary English language, is contained therein." 237 Kan. at 566.

In State v. Erbacher, 8 Kan. App.2d 169 (1982), it was held that a passenger, as well as a driver, could be found guilty for violations of the Open Container of Cereal Malt Beverage Law, K.S.A. 41-2719. The court construed the language "no person shall transport" to be broad enough to include passengers. Using the rules of strict construction, it was stated that "ordinary words are to be given their ordinary meaning; it does not permit or justify a disregard of manifest legislative intention appearing from plain and unambiguous language." (Emphasis added.) 8 Kan. App.2d at 170. In K.S.A. 41-2719, there was a manifest legislative intent to prohibit the presence of open containers as an

indirect method of preventing intoxication of drivers. 8  
Kan. App.2d at 170.

Conversely, the terms of the Safety Belt Use Act do not indicate a manifest legislative intent that drivers should be responsible for passengers' violations. We do not believe that the terms are broad enough to offer such a construction. In unambiguous terms, a violation occurs when an occupant fails to have a safety belt properly fastened. Persons who violate the act, i.e. those who fail to have a safety belt properly fastened, shall be fined.

No doubt, the legislature could have required that drivers ensure passengers' compliance with the act. For example, the Uniform Act Regulating Traffic, K.S.A. 8-2101 et seq., plainly permits an imputation of guilt to another:

"Every person who . . . permits or directs another to violate any provision of this act is likewise guilty of such offense." K.S.A. 8-2101.

However, the Safety Belt Use Act lacks the unequivocal language contained in the Uniform Act Regulating Traffic. In our opinion, for the reasons stated herein, drivers may not be issued citations for violations committed by passengers.

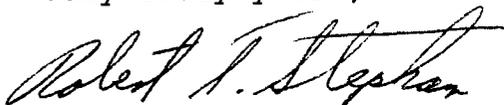
You have further queried whether the age of the passenger violator has an affect on who receives the citation. Consistent with our opinion that drivers are not responsible for violations of passengers, it is also our opinion that there is no manifest legislative intent to make adults responsible for violations committed by minors. The Safety Belt Use Act lacks the statutory language and manifest intent of the Child Passenger Safety Act, K.S.A. 1985 Supp. 8-1344 et seq. which provides:

"It shall be unlawful for any parent or legal guardian of a child under the age of four years to violate the provisions of K.S.A. 8-1344, and amendments thereto [which requires the use of an approved child restraint when transporting such child in the front seat area], and upon conviction shall be punishable by fine of \$10 per occurrence." K.S.A. 1985 Supp. 8-1345.

The Safety Belt Use Act does apply, however, to minors who are 10 years of age and older. K.S.A. 1985 Supp. 21-3105 provides that crimes which are not felonies or traffic infractions listed in K.S.A. 1984 Supp. 8-2118(c) are misdemeanors. In that a violation of the Safety Belt Use Act is not a felony nor listed in K.S.A. 1984 Supp. 8-2118(c) as a traffic infraction, such a violation is a misdemeanor. The Kansas Juvenile Offenders Code [K.S.A. 1985 Supp. 38-1601 et seq.] defines "juvenile offender" as a juvenile who commits a misdemeanor [K.S.A. 1985 Supp. 38-1602(b)] but does not include a person who is 14 or more years of age and who commits a traffic offense in violation of chapter 8 of the Kansas Statutes Annotated [K.S.A. 1985 Supp. 38-1602(b)(1).] A juvenile is defined in K.S.A. 1985 Supp. 38-1602(a) as a person 10 or more years of age. K.S.A. 1985 Supp. 8-2117 authorizes a court of competent jurisdiction to adjudicate persons 14 or more years of age who have committed traffic offenses. Therefore, persons who are 10 years of age or older but less than 14 years of age are to be prosecuted under the Kansas Juvenile Offenders Code, and persons 14 years or older are to be prosecuted in a court of competent jurisdiction.

In conclusion, we are of the opinion that law enforcement officers may issue a citation when facts can be articulated which lead a cautious person to believe that a violation of the act has occurred. Drivers are not to be cited for violations committed by passengers. In addition, any person 10 or more years of age may be held responsible for failure to fasten their safety belt.

Very truly yours,

  
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