



STATE OF KANSAS

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February 18, 1987

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ATTORNEY GENERAL OPINION NO. 87- 29

Jim Pringle
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Sumner County Courthouse
Wellington, Kansas 67152-0497

Re: Automobiles and Other Vehicles--Uniform Act
 Regulating Traffic; Rules of the Road; Serious
 Traffic Offenses--Relevant Date for Suspension of
 Drivers' License

Automobiles and Other Vehicles--Drivers' Licenses;
Habitual Violators--Suspension Date

Synopsis: The length of time that a driver's license is
 suspended pursuant to a DUI conviction is
 subject, to some degree, to judicial discretion.
 Since in exercising that discretion the court may
 rely on a presentence investigation, and such may
 delay sentencing, the suspension does not become
 effective until the order of suspension is made by
 the court. If it were otherwise, the duration of
 the suspension would in effect be shortened because
 the driver, though convicted, is free to drive
 until the court imposes such sanctions. In
 addition, a person should be declared a habitual
 violation when that person has been convicted of
 specified offenses three times in a five-year
 period. The date of sentencing, or the date the
 division of motor vehicles receives notice of the
 sentencing for the third offense, is not the
 relevant time for determining whether a person is a
 habitual violator under the provisions of the
 statute. Cited herein: K.S.A. 1986 Supp. 8-285;
 8-1567; 21-4604; K.S.A. 22-3424.

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Dear Mr. Pringle:

You have requested our opinion concerning the suspension of drivers' licenses under the DUI statutes. Specifically, you inquire first whether the effective date of suspension begins at the time of conviction or at the time of sentencing. Secondly, you inquire whether a person is to be certified as a habitual violator pursuant to K.S.A. 1986 Supp. 8-285 when the person has had three convictions within five years, but the sentencing on the third conviction is not received by the division of motor vehicles until after five years have passed since the date of the first conviction. We will answer the questions in the order they have been presented.

Driving under the influence of alcohol or drugs is a misdemeanor. K.S.A. 1986 Supp. 8-1567. The penalties for violations of K.S.A. 1986 Supp. 8-1567 are found in subsections (d), (e) and (f) of that statute. Subsections (d) and (e) both require that, upon conviction, the court shall enter an order which suspends the person's driver's license. The minimum length of time for which the license is to be suspended is increased to correspond with the number of prior convictions. Prior convictions are considered factors of the penalty, not elements of the unlawful act. State v. Helgeson, 235 Kan. 534 (1984).

The statute contemplates a degree of judicial discretion in ordering the suspension of a driver's license. If the conviction is the offender's first, then the suspension is to be for one year or, in lieu thereof, for twenty-one days or until an educational and treatment program is completed, whichever is longer. K.S.A. 1986 Supp. 8-1567(d). If the conviction is the offender's second, the suspension is to be for one year or, in lieu thereof, for 120 days or until a treatment program is completed, whichever is longer. K.S.A. 8-1567(e). While suspension is mandatory, the duration of the suspension is, to some extent, discretionary.

The statute does not require that sentencing take place on the date of conviction. What is required is that sentencing take place without unreasonable delay. K.S.A. 22-3424. K.S.A. 1986 Supp. 8-1567(i) requires that, prior to sentencing, the court shall receive a record of the offender's prior convictions. In addition, a presentence investigation is optional, either at the request of the court, or at the request of the defendant. K.S.A. 1986 Supp. 21-4604(1). If the accused has been convicted, but the penalty not yet assessed, the suspension would not yet be effective and the

offender could legally operate a motor vehicle. If the time of suspension were to be retroactively applied to the date of conviction, then part of the suspension time would be meaningless. The actual suspension time will have been reduced by the number of days between conviction and sentencing. It is therefore our opinion that the suspension is to run from the date of the court order of suspension, and not from the date of conviction.

You have also asked whether a person is to be certified as a habitual violator pursuant to K.S.A. 1986 Supp. 8-285 when that person has had three convictions within five years, but the sentencing on the third conviction is not received by the division of motor vehicles until after five years have passed since the date of the first conviction. The term "habitual violator" is defined in K.S.A. 1986 Supp. 8-285 as a "person who, within the immediately preceding five years, has been convicted" three times of, violating specified offenses.

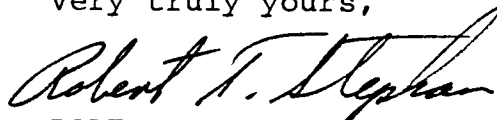
Actions to have a person declared a habitual violator are civil, as opposed to criminal proceedings. State v. Boos, 232 Kan. 864 (1983). The fundamental rule of statutory construction to be applied to civil statutes is that when the purpose and intent of the legislature can be ascertained from the statute, then that intent and purpose govern. Matter of Estate of Estes, 239 Kan. 192 (1986). We believe that the legislative intent is clear. When a person has been three-times convicted of any of the enumerated offenses in a period of five years, then that person may be declared a habitual violator.

This construction of the statute renders the date of sentencing of, or receipt of notice of the conviction by the division of motor vehicles for, the third offense irrelevant. Using the date of sentencing or certification rather than the date of conviction would provide an incentive to defense attorneys in borderline cases to delay sentencing and certification as long as possible in an effort to avoid the habitual violator provisions.

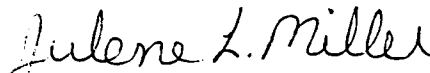
The same argument might apply to using the conviction date as the determinative event rather than the date the violation occurred. However, such an argument is not supported. The legislature has determined that the relevant event should be the time of conviction. K.S.A. 1986 Supp. 8-285. It is therefore our opinion that a person should be certified as a habitual violator when that person has been convicted of the specified offenses three times in a five year period.

In conclusion, the length of time that a driver's license may be suspended pursuant to a DUI conviction is subject, to some degree, to judicial discretion. Since in the exercise of that discretion the court may rely on a presentence investigation, and such may delay sentencing, the suspension does not become effective until the order of suspension is made by the court. If it were otherwise, the duration of the suspension would in effect be shortened because the driver, though convicted, is free to drive until the court imposes such sanctions. In addition, a person should be declared a habitual violator when that person has been convicted of specified offenses three times in a five-year period. The date of sentencing, or the date the division of motor vehicles receives notice of the sentencing for the third offense, is not the relevant time for determining whether a person is a habitual violator under the laws of the statute.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
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RTS:JLM:jm