



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 87- 129

Thomas W. Jones, Sheriff
Thomas County Sheriff's Department
225 North Court
Colby, Kansas 67701

Re: Automobiles and Other Vehicles--Seat Belts--
Enforcement of Safety Belt Use Act

Synopsis: K.S.A. 1986 Supp. 8-2503(e) restricts the enforcement of the Kansas Safety Belt Use Act only in those situations where a law enforcement officer "effects an enforcement stop." Therefore, a person involved in a vehicular accident may be cited for failure to use a safety belt (if that person was not wearing one at the time of the accident) even if such person is not cited for any other violation. Cited herein: K.S.A. 1986 Supp. 8-2501 et seq.; K.S.A. 1986 Supp. 8-2503(e).

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Dear Sheriff Jones:

As Sheriff for Thomas County, you request our opinion regarding the Kansas Safety Belt Use Act, K.S.A. 1986 Supp. 8-2501 et seq. Specifically, you inquire whether a person involved in a vehicular accident who is not cited for any other violation may be cited for failure to use a safety belt if that person was not wearing one at the time of the accident.

You call our attention to K.S.A. 1986 Supp. 8-2503(e), which states:

"Law enforcement officers shall not stop drivers for violations of this act in the absence of another violation of law. A citation for violation of this act shall not be issued without citing the violation that initially caused the officer to effect the enforcement stop."

The Kansas Safety Belt Use Act is penal in nature. K.S.A. 1986 Supp. 8-2504. In State v. Thompson, 237 Kan. 562, 566 (1985), the Kansas Supreme Court reviewed the rules concerning construction of penal statutes:

"Penal statutes must be strictly construed in favor of the persons sought to be subject to them. The rule of strict construction simply means ordinary words are to be given their ordinary meaning. The 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. A statute should never be given a construction that leads to uncertainty, injustice or confusion, if it is possible to construe it otherwise. In construing a statute, words and phrases should be construed according to the context, and the approved usage of the language and words in common use are to be given their natural and ordinary meaning. State v. Dubish, 234 Kan. 708, 675 P.2d 877 (1984)."


In reading the language of K.S.A. 1986 Supp. 8-2503(e), it appears that the legislature has placed a restriction on enforcement of the act. In our opinion, that restriction involves those situations in which a driver is "stopped" by a law enforcement officer. In those situations only, a citation for violation of the act "shall not be issued without citing the violation that initially caused the officer to effect the enforcement stop." K.S.A. 1986 Supp. 8-2503(e). Extending this language to an accident situation, while seemingly sensible, would be reading the statute "to add that which is not readily found therein."

Our opinion is buttressed by the fact that the Safety Belt Use Act would be enforceable without K.S.A. 1986 Supp. 8-2503(e).

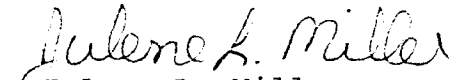
Without K.S.A. 1986 Supp. 8-2503(e), except as provided in K.S.A. 8-1344 and 8-1345 and amendments thereto and in subsection (b) of the act, a law enforcement officer would be able to issue a citation for violation of the act in any situation where each front seat occupant did not have a safety belt properly fastened about such person's body at all times when the vehicle is in motion. Indeed, subsection (e) was not a part of the bill as originally introduced, indicating that it was intended as the exception rather than the rule.

In conclusion, K.S.A. 1986 Supp. 8-2503(e) restricts the enforcement of the Kansas Safety Belt Use Act only in those situations where a law enforcement officer "effects an enforcement stop." Therefore, a person involved in a vehicular accident who is not cited for any other violation may be cited for failure to use a safety belt if that person was not wearing one at the time of the accident.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

RTS:JLM:jm