



STATE OF KANSAS

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February 19, 1988

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ATTORNEY GENERAL OPINION NO. 88- 23

Charles H. Apt
City Attorney
P.O. Box 308
Iola, Kansas 66749

Re: Automobiles and Other Vehicles--Drivers' Licenses;
Motor Vehicle Drivers' License Act--Driving While
License Canceled, Suspended or Revoked; Application
of 90 Day Mandatory Jail Term

Synopsis: The 90 day jail term provided in K.S.A. 1987 Supp.
8-262(a)(4) does not become mandatory until a
person having been convicted of driving under the
influence (D.U.I.) and having his drivers' license
suspended or revoked therefore is subsequently
convicted of both a second D.U.I., committed while
his license was still suspended or revoked pursuant
to the first D.U.I. conviction, and a violation of
driving while his license was suspended or revoked,
committed while his privilege to drive was
suspended for the prior D.U.I. conviction. Cited
herein: K.S.A. 1987 Supp. 8-262; 8-1567.

* * *

Dear Mr. Apt:

As attorney for the city of Iola, you request our
interpretation of the language contained in K.S.A. 1987 Supp.
8-262(a)(4). Specifically, you ask under what circumstances
the mandatory 90 day jail term is to be imposed.

K.S.A. 1987 Supp. 8-262 provides in pertinent part:

"(a)(1) Any person who drives a motor vehicle on any highway of this state at a time when such person's privilege so to do is canceled, suspended or revoked shall be guilty of a class B misdemeanor on the first conviction, a class A misdemeanor on the second conviction and for third and subsequent convictions shall be guilty of a class E felony.

. . . .

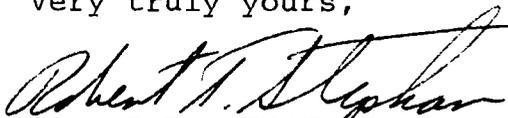
"(4) If a person (A) is convicted of a violation of this section, committed while the person's privilege to drive was suspended or revoked for a violation of K.S.A. 8-1567 and amendments thereto or any ordinance of any city or a law of another state, which ordinance or law prohibits the acts prohibited by that statute, and (B) is or has been also convicted of a violation of K.S.A. 8-1567 and amendments thereto or of a municipal ordinance or law of another state, which ordinance or law prohibits the acts prohibited by that statute, committed while the person's privilege to drive was so suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days' imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment." (Emphasis added.)

In State v. Roudybush, 235 Kan. 834, 842 (1984) the Kansas Supreme Court reiterated the long-standing rule of statutory construction that a criminal statute is to be strictly construed against the state and in favor of those subject to it. K.S.A. 1987 Supp. 8-262 is a criminal statute and thus must be strictly construed against the state. State v. Evans, 10 Kan. App. 2d 171, 173 (1985). See also State v. Floyd, 218 Kan. 764 (1976). Further, legislative intent should be ascertained from a general consideration of the entire statute [State v. Dumler, 221 Kan. 386, 389 (1977)], and effect must be given, if possible, to every part of the statute. State, ex rel.,

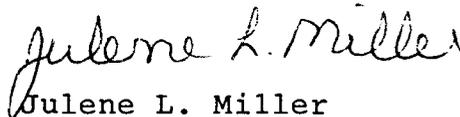
Stephan v. Board of Education of U.S.D. 428, 231 Kan. 579
(1982).

Applying these rules to the statute in question, it is our opinion that at least three convictions must be had before the 90 day jail term becomes mandatory. First the individual must be, or have been, convicted of a violation of K.S.A. 8-1567 (driving under the influence or D.U.I.), or a substantively similar law or ordinance, committed while the person's privilege to drive was suspended or revoked for a prior D.U.I. conviction. Secondly, the individual must be convicted of violating K.S.A. 8-262, or a substantively similar law or ordinance, committed while the person's privilege to drive was suspended for a D.U.I. violation. The convictions for the second D.U.I. and violation of K.S.A. 8-262 (driving while license suspended or revoked for prior D.U.I.) may stem from the same or separate incidents. This interpretation is supported by comments made in the 1985 subcommittee report addressing the addition of subsection (a) (4) to K.S.A. 8-262. See Feb. 2, 1985 Minutes, House Committee on Federal and State Affairs, Attachments A, p. 3 and B, p. 1.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm