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ATTORNEY GENERAL OPINION NO. 88-110

Rodney J. Bieker, Director
Legal Services Section
Kansas State Department of Education
120 E. 10th Street
Topeka, Kansas 66612-1103

Re: Automobiles and Other Vehicles--Drivers' Licenses;
Motor Vehicle Drivers' License Act--Persons to Whom
License Not Issued; Exceptions; Restricted
Licenses, Conditions

Synopsis: K.S.A. 8-237 allows a restricted licensee to
operate a motor vehicle (1) while going to or from
or in connection with any job or employment or (2)
for purposes of school attendance. In our opinion
the work related criteria does not require a formal
employment agreement. The school attendance
restriction permits operation of a motor vehicle
only for attendance purposes and does not permit
operation for the purpose of driving to and from
school for other functions or activities. Cited
herein: K.S.A. 8-237; 8-245; 72-1111.

* * *

Dear Mr. Bieker:

As director of the legal services section for the Kansas
Department of Education you request our opinion on K.S.A.
8-237 as it pertains to the issuance of restricted licenses.
You direct our attention to Attorney General Opinion No. 83-83
and specifically ask that we address the following questions:

- "1. Does 'school attendance' include returning to home over the noon hour for lunch?
- "2. Does 'school attendance' include driving to school, as a band member, to play at an evening concert which is part of a class requirement for a grade in band?
- "3. Does 'school attendance' mean driving to classes, offered for credit, during non-traditional times such as summer or evening?
- "4. Does 'work-related' imply a specific criteria such as a formal employment agreement or do jobs such as babysitting for either your family or someone else, apply to this term?"

K.S.A. 8-237 states in pertinent part:

"The restricted license shall entitle the licensee to operate the appropriate vehicle at any time: (1) While going to or from or in connection with any job, employment or farm-related work; (2) on days while school is in session, over the most direct and accessible route between the licensee's residence and school of enrollment for the purposes of school attendance; (3) when the licensee is operating a passenger car, at any time when accompanied by an adult who is the holder of a valid class A, B or C driver's license and who is actually occupying a seat beside the driver; or (4) when the licensee is operating a motorcycle, at any time when accompanied by an adult who is the holder of a valid class D driver's license and who is operating a motorcycle in the general proximity of the licensee." (Emphasis added.)

The first three situations posed by counsel all require interpretation of the phrase "school attendance." We opined in Attorney General Opinion No. 83-83 that the term school attendance prohibited the operation of a motor vehicle for transportation to mere school related or extracurricular activities such as football games and school plays, unless those activities occur at the school immediately after classes

which were attended by the restricted licensee. See also Opinions No. 61-177 and 75-363.

K.S.A. 8-237(2) only permits operation of a motor vehicle between the licensee's residence and school of enrollment "on days school is in session for the purposes of school attendance." Activities that are school sponsored or class associated are not necessarily required for school attendance and often occur when school is not in session. If the legislature intended to allow a licensee to drive for all activities associated with school, the statute would expressly permit licensees to make trips during school days or hours to and from home for all purposes, not just school attendance purposes. The legislature obviously did not intend such a broad interpretation. The narrow "purpose of school attendance" language limits the young driver's unsupervised driving. Thus, in our opinion, K.S.A. 8-237(2) permits a restricted licensee to drive only in order to be present for school attendance purposes, while school is in session and then to return home.

The Kansas compulsory school attendance law, K.S.A. 72-1111 et seq., specifies what is required for school attendance. See Attorney General Opinion No. 87-46. K.S.A. 72-1111, combined with individual school requirements, will determine what is necessary to attend school. K.S.A. 8-237(2) allows driving to attend school and thus by inference prohibits operating a vehicle for other purposes. If, after attending school, a student returns home, K.S.A. 8-237(2) forbids solo operation of a motor vehicle by a student in order to return to school for purposes other than school attendance. This is especially true if school is not in session.

It is our opinion that returning home or going elsewhere for lunch is not attending school; nor is driving back to school when school is not in session in order to be part of a band concert. Going home for lunch or attending after school functions is not attending school while it is in session, in the strictest sense of the phrase. The fact that a play, concert, football game, etc. is a requirement for a class makes the question more difficult. However, particular classes, and their after-school components, are not necessarily core curriculum classes required to attend school. Additionally, these activities often occur when school is not in session. Finally, the legislature's intention to strictly limit the restricted licensee's use of

motor vehicles would not be furthered by a contrary conclusion.

Driving to classes offered while school is in session during non-traditional times, such as summer or evening, more closely resembles school attendance as required by K.S.A. 72-1111 et seq., and in our opinion may be permissible in specific instances. Driving to attend a class while school is in session can be distinguished from driving to lunch or to an activity associated with a class that occurs when school is not in session.

Your fourth question concerns K.S.A. 8-237(1) and asks for a definition of "work related." Attorney General Opinion No. 77-11 stated that under K.S.A. 8-237 the holder of a restricted license could operate a motor vehicle at any time while going to or from or in connection with any job or employment, whether or not the driver receives compensation for such job or employment. See also Opinion No. 75-363. We agree that compensation, or lack thereof, does not necessarily determine whether an individual is employed. Moreover, subsection (1) of K.S.A. 8-237 appears to permit a licensee greater access to a motor vehicle than subsection (2) as the language not only permits driving "to and from" but also driving "in connection with."

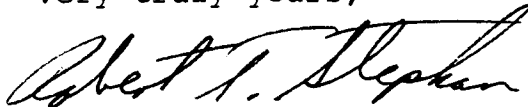
Whether or not someone is employed or has a job is often a fact question, properly determined on a case by case basis. Job is defined as "[a] specific task or piece of work to be done for a set fee or compensation . . . [an] employment position." Blacks Law Dictionary 749 (5th ed. 1979). Employment is defined as an "[a]ctivity in which a person engages or is employed; normally on a day to day basis." Id. at 471. Thus, employment is more easily established if the employee is paid or if the task is regularly performed, though these factors are not necessarily required to establish employment.

Persons who qualify for a restricted license often hold jobs that are sporadic or occasional. Very rarely do fourteen-year-olds sign an employment agreement. The restriction in K.S.A. 8-237(1) does not mandate that work be formal or meet specific criteria. However, the more informal or irregular the agreement the less likely that a court would consider the restricted licensee to be driving while employed or on a job connected errand, particularly if no compensation is involved; working as a babysitter for a family member would probably be permissible, but running occasional errands

for oneself or another teenager would not. Thus, it is our opinion that, pursuant to K.S.A. 8-237(1), a licensee need not meet specific criteria or have a formal employment agreement, however, lack of compensation, specific agreement terms or regularity all combine to evidence a lack of employment.

Please note that our opinion on what constitutes school attendance and job or employment relationships rests on general principles. Specific fact situations as to school attendance requirements or employment relationships may individually impact on a particular court's view on the permissibility of the use of a motor vehicle by a restricted licensee. In order to avoid sanctions pursuant to K.S.A. 8-245, a restricted licensee should be advised to err on the side of caution.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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