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August 15, 1989

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ATTORNEY GENERAL OPINION NO. 89- 104

Nola Foulston  
Sedgwick County District Attorney  
Sedgwick County Courthouse  
535 N. Main  
Wichita, Kansas 67203

Re: Automobiles and Other Vehicles--Miscellaneous  
Provisions; Child Passenger Safety Act--Effect of  
1989 House Bill No. 2196

Synopsis: A law enforcement officer may stop and cite a  
driver for violation of K.S.A. 8-1344 and 8-1345,  
as amended, of the child passenger safety act even  
in the absence of another violation of law. Cited  
herein: K.S.A. 8-1344, as amended by L. 1989, ch.  
40, §1; 8-1345, as amended by L. 1989, ch. 40, §2;  
K.S.A. 1988 Supp. 8-2503, as amended by L. 1989,  
ch. 40, §4.

\* \* \*

Dear Ms. Foulston:

You request our opinion regarding 1989 House Bill No. 2196  
which amends certain provisions of the child passenger safety  
act, K.S.A. 8-1343 et seq. Since the bill also amends  
K.S.A. 1988 Supp. 8-2503, you question whether subsection (e)  
of K.S.A. 1988 Supp. 8-2503, as amended, would preclude an  
officer from stopping a driver for violating the child  
passenger safety act in the absence of another violation of  
law.

1989 House Bill No. 2196 (L. 1989, ch. 40) strengthens the child passenger safety act in several ways: Its provisions apply to children up to age 14 whereas previously only children under age 4 were covered; it extends coverage to children riding in the back seat as well as the front; it makes the child passenger safety act applicable to all drivers on Kansas highways rather than just parents or guardians and regardless of residency. Testimony before the committee indicates that proponents of the bill thought that these provisions would also fill gaps in the safety belt use act, K.S.A. 1988 Supp. 8-2501 et seq. See Minutes of the House Committee on Transportation, February 14, 1989 and Minutes of the Senate Committee on Transportation and Utilities, March 21, 1989, and attachments thereto.

Section 4 of House Bill 2196 amends K.S.A. 1988 Supp. 8-2503 apparently to clarify that its requirements do not apply to children under 4 years of age required to be protected by a safety restraining system under the child passenger safety act. K.S.A. 8-1344(a), as amended. Section 4 provides:

"K.S.A. 1988 Supp. 8-2503 is hereby amended to read as follows:  
8-2503. (a) Except as provided in K.S.A. 8-1344 and 8-1345, and amendments thereto, and in subsection (b), each front seat occupant of a passenger car manufactured with safety belts in compliance with federal motor vehicle safety standard no. 208 shall have a safety belt properly fastened about such person's body at all times when the vehicle is in motion.

"(b) This section does not apply to:

"(1) An occupant of a passenger car who possesses a written statement from a licensed physician that such person is unable for medical reasons to wear a safety belt system;

"(2) carriers of United States mail while actually engaged in delivery and collection of mail along their specified routes;

"(3) newspaper delivery persons while actually engaged in delivery of newspapers along their specified routes; or

"(4) an occupant of a passenger car required to be protected by a safety restraining system under the child passenger safety act.

"(c) The secretary of transportation shall initiate an educational program designed to encourage compliance with the safety belt usage provisions of this act.

(d) The secretary shall evaluate the effectiveness of this act and shall include a report of its findings in the annual evaluation report on its highway safety plan that it submits under 23 U.S.C. 402.

(e) 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." (Emphasis indicates new language).

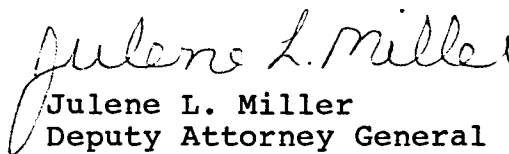
By its terms, subsection (e) of section 4 applies to "this act." Arguably, "this act" could be construed as including the provisions of L. 1989, ch. 40 (1989 House bill No. 2196) as K.S.A. 1988 Supp. 8-2503 was amended in that bill and, pursuant to article 2, section 16 of the Kansas Constitution, "sections so amended shall be repealed." This could be argued to mean that K.S.A. 1988 Supp. 8-2503 as originally enacted in L. 1986, ch. 35 no longer exists. However, K.S.A. 1988 Supp. 77-201 First and a long line of Kansas cases stand for the proposition that "[t]he provisions of any statute, so far as they are the same as those of any prior statute, shall be construed as a continuation of the prior provisions and not as a new enactment." K.S.A. 1988 Supp. 77-201 First. See Fuller v. Atchison, T. & S.F. Rly. Co., 124 Kan. 66, 72 (1927); Curless v. Board of County Commissioners, 197 Kan. 580, 587 (1966); City of Council Grove v. Schmidt, 155 Kan. 515, 520 (1942); Harvey County Commissioners v. Commission of Revenue and Taxation, 150 Kan. 458, 460

(1939). In City of Manhattan v. United Power and Light Corp., 129 Kan. 592, 596 (1930), the court held that the fact that a statute is later amended does not serve to segregate that statute from the sections in its original enactment. Thus, as we find no legislative intent to the contrary, we believe the reference to "this act" in section 4(e) of 1989 House Bill No. 2196 relates back to the safety belt use act, L. 1986, ch. 35, rather than the other provisions of L. 1989, ch. 40. It is therefore our opinion that a law enforcement officer may cite a driver for a violation of K.S.A. 8-1344 and 8-1345 even in the absence of another violation of law.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm