



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 27

The Honorable David S. Knudson
District Judge
City-County Building
P. O. Box 1756
1300 West Ash
Salina, KS 67402-1756

Re: Automobiles and Other Vehicles -- Act Regulating
Traffic; Rules of the Road -- Driving Under
Influence of Alcohol or Drugs; Penalties

Synopsis: Under K.S.A. 8-1567(f), which is a mandatory
sentencing statute, the court may not suspend a
portion of the fine in an amount equal to
participation in a weekend intervention program for
first time DUI offenders. State v. Kitzman,
240 Kan. 191, (1986).

Although the DUI statutes are not under the
criminal code, the sentencing section does have a
criminal connotation. Therefore using K.S.A.
21-4610(j), which defines public service, as a
guide, it would be in the court's discretion to
decide if the program fit within those parameters
and to order participation in the program would
qualify as public service. Cited herein: K.S.A.
1990 Supp. 8-1567 and K.S.A. 21-4610.

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Dear Judge Knudson:

As Judge of the district court in Saline county, you request our opinion regarding whether under K.S.A. 1990 Supp. 8-1567(f) the court for a first time DUI offender can suspend a portion of the fine in an amount equal to participation in the weekend intervention program and whether under K.S.A. 1990 Supp. 8-1567(k) participation in the 48-hour intervention program is considered to be public service.

You inform us that the district court of Saline county would like to order as a condition for probation for first time DUI offenders, 48 hours in the intervention program at a dormitory at Kansas Wesleyan being leased by the Central Kansas Foundation in lieu of 48 hours in the Saline county jail. The program will be under the Central Kansas Foundations's auspices and cost each offender \$185. The court would then suspend a portion of the fine in an amount equal to participation in the weekend intervention program.

In our opinion, although the concept makes good sense, the holding in State v. Kitzman, 240 Kan. 191, (1986) seems to preclude it. In Kitzman, the district court judge imposed on the defendant a fine and then suspended it. The Supreme Court of the state of Kansas held that the statute did not provide for suspension of the fine imposed, only suspension or reduction of the sentence imposed. Therefore because of the mandatory sentencing statute, the trial court did not have discretion to waive, remit, suspend, or "parole" the fine.

Next you would like to know if participation in the 48-hour intervention program is considered to be public service under K.S.A. 1990 Supp. 8-1567(k). In a previous opinion by our office, we noted that specific details concerning the performance of such service are not set forth by the statute, i.e. what entities are eligible for inclusion in a program made up of violators performing community service work and how such persons are assigned. Attorney General Opinion No. 82-183. However, other statutes give guidance as to the tasks the participants could be assigned. For example, the Kansas criminal code section on conditions of probation and suspended sentence, K.S.A. 21-4610, provides that a court, as one of the conditions it prescribes, may require a violator to:

"perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community."
K.S.A. 21-4610(j).

By having the person attend the weekend intervention program, you are obviously trying to provide for the interest of not only the offender but society.

In our opinion, although the DUI statutes are not under the criminal code, the sentencing section does have a criminal connotation. Therefore using the above statute cited from the criminal code defining public service, as a guide; as long as the program fits within the parameters, then it would be in the court's discretion to impose the program as public service for first time DUI offenders.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jalynn Copp
Assistant Attorney General

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