

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 91- 63

Paul J. Morrison  
District Attorney  
Johnson County Courthouse  
P.O. Box 728, 6th Floor Tower  
Olathe, Kansas 66061

Re: Public Health--Controlled Substances; Uniform  
Controlled Substances Act--Unlawful Acts;  
Possession of Methamphetamine

Synopsis: Possession of methamphetamine under the uniform  
controlled substances act, K.S.A. 65-4101 et  
seq., is a class C felony as of July 1, 1990.  
Cited herein: K.S.A. 1990 Supp. 65-4107; 65-4127a;  
65-4127b; 65-4127f; 65-4127g, as amended by 1991  
House Bill No. 2365; 65-4159.

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Dear Mr. Morrison:

As Johnson county district attorney you inquire whether  
possession of methamphetamine is a felony or a misdemeanor  
pursuant to the 1990 amendments to the Kansas uniform  
controlled substances act.

Prior to the 1990 session, possession of methamphetamine was  
prohibited pursuant to K.S.A. 65-4127b(a)(2), being a class A  
misdemeanor on a first offense and a class D felony on second  
and subsequent convictions. On February 1, 1990, House Bill  
No. 2782 was introduced proposing an amendment to both K.S.A.  
65-4127a and K.S.A. 65-4127b essentially making drug  
trafficking offenses committed within 1,000 feet of school

property class B felonies. This was passed and became effective July 1, 1990. On February 20, 1990, Senate Bill No. 707 was introduced. This bill created a new crime of manufacturing controlled substances (now found at K.S.A. 1990 Supp. 65-4159) and removed references to methamphetamine ["any stimulant designated in subsection (d) (1) or (d) (3) or (f) (1) of K.S.A. 65-4107 and amendments thereto"] from K.S.A. 65-4127b and placed those references into K.S.A. 65-4127a, thus making simple possession a class C felony. 1990 Senate Bill No. 707 was later incorporated into 1990 House Bill No. 2770 in conference committee which passed both houses unanimously. Neither House Bill No. 2782 or House Bill No. 2770 made reference to the other bill's amendments, but both became effective July 1, 1990.

Faced with two versions of K.S.A. 65-4127a and two versions of K.S.A. 65-4127b, the revisor's office incorporated the changes in House Bill No. 2782 (L. 1990, ch. 101) into K.S.A. 65-4127a and K.S.A. 65-4127b, made reference to the dual amendments in a "revisor's note" and placed the changes contained in House Bill No. 2770 (L. 1990, ch. 100) under two new designations: the chapter 100 version of K.S.A. 65-4127a was designated K.S.A. 65-4127f and the chapter 100 version of K.S.A. 65-4127b was designated K.S.A. 65-4127g. Thus, the apparent conflict was created wherein possession of methamphetamine is set out as a class C felony in K.S.A. 1990 Supp. 65-4127f while the original language designating the same offense as a class A misdemeanor still exists in K.S.A. 1990 Supp. 65-4127b.

The resolution of this paradox is found in the rules of statutory construction.

"This court has held that the fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute, even though words, phrases or clauses at some place in the statute must be omitted or inserted. (Citations omitted). The various provisions of a statute in pari materia must be construed together with a view of reconciling and bringing them into workable harmony if it is reasonably possible to do so." State v.

Micheaux, 242 Kan. 192, 199 (1987)  
(citations omitted).

Since these two bills involve the same statute passed in the same session and have the same effective date, this is clearly an appropriate application of the rule of in pari materia. State v. Bradley, 215 Kan. 642 (1974). As such these two versions of these statutes should be read as one. All of the amendments should be read into the statute and the old conflicting language deleted.

It should be noted that House Bill No. 2782 should not be viewed as a rejection of the provisions in House Bill No. 2770, even though it was passed later in the session, if only by four days. Such interpretation would be contrary to the rule that where express terms of repeal are not used there is a presumption against finding an intention to repeal an earlier statute. 9 C.J.S. Statutes § 289. This presumption is further bolstered by the fact that House Bill No. 2782 was introduced before Senate Bill No. 707 and thus the legislative intent could not have been to repeal language in a statute that was yet to be introduced.

Even if these bills were to be viewed in conflict, other rules of statutory construction would support charging possession of methamphetamine as a class C felony. K.S.A. 65-4127b makes the crime a class A misdemeanor in section (a)(2). That section makes unlawful possession of any stimulant designated in subsections (d) or (f) of K.S.A. 65-4107. K.S.A. 65-4127f provides that it is unlawful to possess "any stimulant designated in subsection (d)(1) or (d)(3) or (f)(2) of K.S.A. 65-4107 and amendments thereto." Such a crime is classified in that statute as a class C felony.

Methamphetamines are listed in K.S.A. 1990 Supp. 65-4107(d)(3). Clearly, with regard to methamphetamine, K.S.A. 65-4127f is the more specific in its referral to subsection (d)(3). K.S.A. 65-4127b simply refers to subsection (d). Statutory construction rules provide that the more specific statute will prevail over a general statute.

"General and special statutes should be read together and harmonized whenever possible, but to the extent a conflict between them exists, the special statute will prevail unless it appears the legislature intended to make the general statute controlling." Kansas Racing

Management, Inc. v. Kansas Racing  
Commission, 244 Kan. 343, 353 (1989).  
See also, American Fidelity Insurance  
Company v. Employers Mutual Casualty  
Company, 3 K.A.3d 245, 250 (1979).

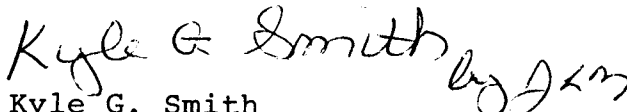
Here it is not apparent that the legislature intended K.S.A. 65-4127b to apply. Because K.S.A. 65-4127f specifically refers to subsection (3) of K.S.A. 65-4107(d), that statute should apply, and violations should be charged as a class C felony.

Finally, it should be noted that the 1991 legislature resolved this paradox in precisely the manner suggested by the rules of statutory construction by passing House Bill No. 2365, published in the Kansas Register and thus effective on May 2, 1991. This bill, in fact, combined the amendments contained in the 1990 amendments. Possession of methamphetamine is now prohibited only under K.S.A. 65-4127a, as a class C felony and the pre-1990 language making the crime an A misdemeanor under K.S.A. 65-4127b has been removed. Having combined both 1990 versions of K.S.A. 65-4127a and K.S.A. 65-4127b the alternate designations, K.S.A. 65-4127f and K.S.A. 65-4127g, were repealed. 1991 House Bill No. 2365 would seem to be a clear manifestation of the legislative intent that the two versions passed last year were merely an oversight and that possession of methamphetamine, since July 1, 1990, is a class C felony.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Kyle G. Smith  
Assistant Attorney General

RTS:JLM:KGS:jm