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ATTORNEY GENERAL OPINION NO. 92-22

The Honorable Mark Parkinson  
State Representative, 14th District  
16000 W. 136th Terr.  
Olathe, Kansas 66062

Re: Automobiles and Other Vehicles -- Drivers' Licenses; Motor Vehicle Drivers' License Act -- Restricted Licenses; Persons Aged 14-16

Synopsis: Pursuant to K.S.A. 8-237 the chief law enforcement officer of a local unit of government can only recommend to the division of vehicles if an applicant should be issued a driver's license. The final decision rests with the division of vehicles. Cities and counties are not able to use their home rule powers to deny licenses to persons under the age of 16 years if the statute is uniformly applicable and does not grant such authority. Allowing the raising of the driving age to 16 years, in some counties but not others, will not violate an individual's constitutional right to equal protection. Cited herein: K.S.A. 8-237, Kan. Const., Art. 12, § 5.

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Dear Representative Parkinson:

As representative for the fourteenth district, you have requested our opinion on whether the age for receiving a driver's license can be raised from 14 to 16 years. Specifically you ask the following questions:

"1. Does K.S.A. 8-237(a) allow the governing body of a city to require that its chief law enforcement officer reject all applications for persons who are 14 and 15 years of age?

"2. If K.S.A. 8-237(a) provides the county or city governing body the power discussed in question 1, does the Division of Motor Vehicles still have the right to reverse the decision of the local law enforcement officer?"

In the next set of questions, you make the assumption that K.S.A. 1990 Supp. 8-237(a) does not currently provide a county or city governing body with the powers that are asked about in questions 1 and 2. You also assume enactment of legislation amending K.S.A. 8-237(a) to allow the governing body of a county to exercise an option to specifically prohibit any persons 14 or 15 years of age in that county from receiving a driver's license. Assuming that K.S.A. 8-237(a) is amended in that manner, you ask the following questions:

"3. Is there anything in Kansas law that would prevent a county from being given the authority over each of the cities in the county to deny drivers' licenses to persons aged 14 and 15? In other words, must it be a city option as is currently contemplated in K.S.A. 8-237(a), or can we simply turn the entire matter over to the counties?

"4. Is there any prohibition in Kansas law that would need to be amended to allow counties to have the option to opt out of the statute that allows 14 and 15 year olds to receive restricted licenses?

"5. Would providing a statute allowing 14 and 15 year olds in one county to receive restricted licenses, while not allowing it in other counties, violate the equal protection clause of the constitution?"

Primarily you ask whether the chief law enforcement officer of a city currently has the authority to reject all applications for persons 14 and 15. K.S.A. 8-237 provides in part that:

"The division of vehicles shall not issue any driver's license to any person:

"(a) Who is under the age of 16 years, except that the division may issue a restricted class C or D license, as provided in this act, to any person who is at least 14 years of age upon written

application of the person's parent or guardian. . . . The governing body of any city, by ordinance, may require the application of any person who is under 16 years of age and who resides within the city to be first submitted to the chief law enforcement officer of the city. The board of county commissioners of any county, by resolution, may require the application of any person who is under 16 years of age and who resides within the county and outside the corporate limits of any city to be first submitted to the chief law enforcement officer of the county. . . . The chief law enforcement officer of any city or county which has adopted the ordinance or resolution authorized by this subsection shall make a recommendation on the application as to the necessity for the issuance of the restricted license, and the recommendation shall be transmitted, with the application, to the division of vehicles. If the division finds that it is necessary to issue the restricted license, it shall issue a driver's license to the person. (Emphasis added).

Pursuant to this statute, the governing body of any city and the board of county commissioners of any county may pass an ordinance or resolution to require persons under the age of 16 years who reside within that entity's jurisdiction to submit an application to the chief law enforcement officer of the city or county; however, the chief law enforcement officer only makes a recommendation to the division of vehicles on whether the license should be issued to the applicant. The power to grant or deny that license vests in the division of vehicles. Therefore, the chief law enforcement officer does not currently have the authority to reject applications of 14 and 15 year olds.

In response to questions three and four, cities have home rule authority pursuant to article 12, section 5, of the Kansas Constitution and the legislature has granted home rule authority to counties pursuant to K.S.A. 1991 Supp. 19-101a. However, home rule power is not available in situations where there are statutes uniformly applicable to all cities or counties. Blevins v. Hiebert, 247 Kan.

1 (1990). Based on this, cities and counties would not be able to use their home rule powers to deny licenses to persons under the age of 16 years if the statute remains uniformly applicable and does not grant this authority. However, the legislature could specifically amend the statutes and give counties and cities home rule authority regarding this issue.

In deciding an equal protection question, the first issue we must consider is whether driving is a fundamental right.

In Massachusetts Board of Retirement v. Murgia, 96 S.Ct. 2562, 42 US 307 (1976), the Supreme Court held that mandatory retirement at the age of 50 did not deny the appellee equal protection. The court cited San Antonio School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278 (1973), which held that "Equal Protection Analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." 96 S.Ct. 2562 at 2566.

In the state of Kansas driving is not a fundamental right. In State v. Finley, 198 Kan. 585 (1967), the court held that "Kansas has always regarded a license to drive a motor vehicle upon a public highway to be a privilege." (See also Lee v. State, 187 Kan. 566 (1960) Marbut v. Motor Vehicle Department, 194 Kan. 620 (1965), holding the right to operate a motor vehicle upon public streets is not a natural right, but a privilege, subject to reasonable regulation in the public interest.) Therefore, the right to drive is not a fundamental right and it is not subject to strict scrutiny under this equal protection analysis. Furthermore, licensing of drivers many be subject to reasonable regulation in the public interest.

Next, we must consider whether age places an individual in a suspect class. In Murgia the court held that "the class of uniformed state officers over 50 [did not] constitute a suspect class for purposes of equal protection analysis. Rodriguez, supra 411 U.S. at 28, 93 S.Ct. at 1294, observed that a suspect class is one 'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, position of political powerlessness as to command extra-ordinary protection from the majoritarian political process.' 96 S.Ct. at 2567. The court also held that "old" age does not define a 'discrete and insular group, U.S.V. Caveine Products Co., 304 U.S. 144, 152-153, n. 4, 58 S.Ct. 778, 783, 82 L.Ed. 1234 (1938), in need of

extraordinary protection from the majoritarian political process." Id.

Although the Murgia case addresses "old" age, the rational that was used in the case can be applied to the issue of 14 and 15 year olds receiving drivers' licenses. 14 and 15 year olds have not been recognized as a suspect class by the courts. They are not "saddled with disabilities" or subject to a history of purposeful unequal treatment. Therefore, legislation which treats this class differently is not subject to strict scrutiny under the equal protection analysis as a suspect class.

In conclusion, allowing the raising of the driving age to 16 in some counties but not others will not violate an individual's constitutional right to equal protection.

Very truly yours,



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