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April 5, 2012

ATTORNEY GENERAL OPINION NO. 2012- 9

Mr. David Clauser
Kansas Department of Revenue
Legal Services Bureau
915 SW Harrison Street
Topeka, KS 66612

Re: Automobiles and Other Vehicles—Driving Under Influence of Alcohol or
 Drugs; Related Provisions—Suspension and Restriction of Driving
 Privileges for Test Refusal, Test Failure or Alcohol or Drug-Related
 Conviction; Ignition Interlock Device

 Automobiles and Other Vehicles—Driving Under Influence of Alcohol or
 Drugs; Related Provisions—Authorized Restrictions of Driving Privileges;
 Ignition Interlock Device

Synopsis: The application fee described in K.S.A. 2011 Supp. 8-1015(g) applies only
 to persons requesting retroactive application of the 2011 amendments to
 the suspension period of their driving privileges pursuant to K.S.A. 2011
 Supp. 8-1014(g). K.S.A. 2011 Supp. 8-1015(g) authorizes only one
 distribution of the aggregate amount of \$100,000 from the application fees
 to the Division of Vehicles Operating Funds. Cited herein: K.S.A. 2011
 Supp. 8-1014; 8-1015; K.S.A. 2010 Supp. 8-1014; 8-1015; L. 2011, Ch.
 105, § § 14, 15.

* * *

Dear Mr. Clauser:

As general counsel for the Kansas Department of Revenue (KDOR), you ask for an opinion concerning the 2011 amendment to K.S.A. 2010 Supp. 8-1015 that imposes an application fee to modify the administrative penalties applied to a person's driving privileges. First, you ask whether the fee is imposed only for applications submitted

under subsection (g) of K.S.A. 2011 Supp. 8-1015 or whether the fee can also be imposed for applications submitted under subsection (a)(1) of K.S.A. 2011 Supp. 8-1015. Your other question is whether the distribution of the aggregate amount of \$100,000 from the application fees to KDOR, Division of Vehicles Operating Funds, occurs once or annually pursuant to K.S.A. 2011 Supp. 8-1015(g).

Our analysis follows the rules of statutory interpretation employed by courts. The fundamental rule of statutory interpretation is that the intent of the legislature governs if that intent can be ascertained.¹ The first step to ascertain legislative intent is through the language of the statutory scheme enacted.² When a statute is plain and unambiguous, we neither speculate as to the legislative intent behind it nor read into the statute something not readily found in it.³ The provisions of an act should be considered *in pari materia*, rather than as isolated parts, with a view of reconciling and bringing the provisions into a workable harmony if possible.⁴ Because the 2011 act amended K.S.A. 2010 Supp. 8-1014 and 8-1015,⁵ we review both statutes.

Subsections (a), (b), and (c) of K.S.A. 2011 Supp. 8-1014 govern the administrative penalties applied to the driving privileges of persons who refuse to submit to a test for determining the presence of alcohol or drugs, fail such test, or have an alcohol or drug related conviction in Kansas. In general, the person's driving privileges are suspended for one year; that suspension period is followed with a restriction of driving a vehicle equipped with an ignition interlock device for one, two, three, four or ten years. The length of the restriction is dependent upon the number of prior test refusals, test failures, alcohol or drug convictions in Kansas, and the test results of the person's blood or breath alcohol concentration.⁶

Pertinent to your inquiry are the 2011 amendments authorizing modification of the one-year suspension period. One such modification applies to suspensions imposed under the current law.

K.S.A. 2011 Supp. 8-1015(a)(1) states:

Whenever a person's driving privileges have been suspended for one year as provided in subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto, after 45 days of such suspension, such person may apply to the division for such person's driving privileges to be restricted for the remainder of the one-year suspension period to driving only a motor

¹ *State v. Comprehensive Health of Planned Parenthood*, 291 Kan. 322, 357 (2010).

² *Id.*

³ *Id.*

⁴ *Southwestern Bell Tel. Co. v. Beachner Constr. Co.*, 289 Kan. 1262, 1270 (2009).

⁵ L. 2011, Ch. 105, § § 14 and 15.

⁶ K.S.A. 2011 Supp. 8-1014(a)(1)-(5), (b)(1)(B)-(E), and (c)(2). Two exceptions are K.S.A. 2011 Supp. 8-1014(b)(1)(A) (first failure of alcohol or drug test or first alcohol or drug conviction in Kansas and test result less than .15) and (c)(1) (under 21 years of age, first failure of alcohol or drug test or first alcohol or drug conviction in Kansas, and test result less than .15).

vehicle equipped with an ignition interlock device and only for the purposes of getting to and from: Work, school or an alcohol treatment program; and the ignition interlock provider for maintenance and downloading of data from the device.

The other 2011 amendments authorizing modification of driving privileges apply to suspensions imposed under the prior law. Although you reference only K.S.A. 2011 Supp. 8-1015(g), the retroactive provision also is in K.S.A. 2011 Supp. 8-1014(g).

K.S.A. 2011 Supp. 8-1014(g) states:

The provisions of subsections (a), (b) and (c), as amended by this act, may be applied retroactively only if requested by a person who has had such person's driving privileges suspended or restricted pursuant to subsection (a), (b) or (c) prior to such amendment. Such person may apply to the division to have the penalties applied retroactively, as provided under subsection (f) [(g)] of K.S.A. 8-1015, and amendments thereto.⁷

The relevant part of K.S.A. 2011 Supp. 8-1015(g) states:

Any person who has had the person's driving privileges suspended or restricted pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014, prior to the amendments by this act, may apply to the division to have the suspension and restriction penalties modified in conformity with the provisions of subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto. The division shall assess an application fee of \$100 for a person to apply to modify the suspension and restriction penalties previously issued. . . . The application fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for such application. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. The division shall modify the suspension and restriction penalties, unless such person's driving privileges have been restricted, suspended, revoked or disqualified pursuant to another action by the division or a court.

Your first question is whether the application fee described in K.S.A. 2011 Supp. 8-1015(g) is required for modifications sought only under subsection (g) of K.S.A. 2011 Supp. 8-1014 or for modifications sought under either subsection (a)(1) of K.S.A. 2011Supp. 8-1015 or subsection (g) of K.S.A. 2011 Supp. 8-1014.

When the provisions in K.S.A. 2011 Supp. 8-1014(g) and K.S.A. 2011 Supp. 8-1015(g) are construed *in pari materia*, it is clear the fee applies to applications seeking

⁷ It appears the citation in brackets is to correct a typographical error in the act. See L. 2011, Ch. 105, § 14(g) and § 15(f), (g).

retroactive application of the 2011 amendments. K.S.A. 2011 Supp. 8-1014(g) expressly references K.S.A. 2011 Supp. 8-1015(g) as the procedure for requesting retroactive application of the 2011 amendments. By contrast, K.S.A. 2011 Supp. 8-1015(a)(1) does not reference K.S.A. 2011 Supp. 8-1015(g) as the procedure for requesting a restriction after 45 days of the suspension period have expired or refer to an application fee.

We need not speculate about the legislative intent as the language in K.S.A. 2011 Supp. 8-1015(a)(1) is plain and unambiguous. To apply the fee in K.S.A. 2011 Supp. 8-1015(g) to applications submitted under K.S.A. 2011 Supp. 8-1015(a)(1) requires that we add language either referencing the procedure in K.S.A. 2011 Supp. 8-1015(g) or an application fee.

Based upon the above analysis, our opinion is the application fee in K.S.A. 2011 Supp. 8-1015(g) applies only to persons requesting retroactive application of the 2011 amendments to the suspension of their driving privileges pursuant to K.S.A. 2011 Supp. 8-1014(g). The application fee in K.S.A. 2011 Supp. 8-1015(g) does not apply to persons requesting the one-year suspension period be shortened pursuant to K.S.A. 2011 Supp. 8-1015(a)(1).

Your second question regarding the distribution of the application fee pertains to the remaining language of K.S.A. 2011 Supp. 8-1015(g). In pertinent part, it states:

The division shall remit all application fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury and shall credit such moneys to the division of vehicles operating fund until an aggregate amount of \$100,000 is credited to the division of vehicles operating fund. On and after an aggregate amount of \$100,000 is credited to such fund the entire amount of such remittance shall be credited to the community corrections supervision fund created by K.S.A. 2011 Supp. 75-52,113, and amendments thereto.

We believe this language to be plain and unambiguous. It expressly states "until an aggregate amount of \$100,000 is credited to the division of vehicles operating fund." Nothing in K.S.A. 2011 Supp. 8-1015(g) refers to the aggregate amount of \$100,000 each year or to the annual aggregate amount of \$100,000. To interpret this provision as requiring an annual or yearly credit of \$100,000 requires us to read into the statute something not readily found in it.

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Applying the above rules of statutory interpretation, we conclude that K.S.A. 2011 Supp. 8-1015(g) authorizes only one distribution of the aggregate amount of \$100,000 from the application fees to the Division of Vehicles Operating Funds.

Sincerely,

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Attorney General

Janet L. Arndt
Assistant Attorney General

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