



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 31, 1978

ATTORNEY GENERAL OPINION NO. 78- 48

Colonel Allen Rush
Superintendent
Kansas Highway Patrol
Building 2, Suite 130
200 East Sixth Street
Topeka, Kansas 66603

Re: Automobiles And Other Motor Vehicles--Evidence Of
Alcoholic Content Of Blood Of Operator--Drivers
Consent To Blood Alcohol Test

Synopsis: A minor has the capacity to consent or refuse a
blood alcohol test under the procedures of K.S.A.
8-1001, though a medical facility cannot be com-
pelled to administer the test if it chooses to
require parental or guardian approval.

The administrative sanctions flowing under K.S.A.
8-1001 as a result of refusing to submit to a
blood alcohol test would not apply unless the
minor himself actually refuses the test.

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Dear Colonel Rush:

In your letter of August 18, you request a clarification of
the procedures for obtaining blood alcohol tests on two groups
of minors [(1) under 16, and (2) ages sixteen and seventeen]
in situations when a medical facility refuses to administer
the test without parental or guardian approval. You also seek
an opinion regarding the applicability of the administrative
sanctions under K.S.A. 8-1001 when a parent or guardian does
not allow the blood test.

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A prior opinion of this office has interpreted K.S.A. 8-1001 as applicable to minors. The language of the statute deems "any person who operates a motor vehicle" to have consented to a chemical test of blood, urine, etc. Since minors have the capacity to obtain a driver's license at sixteen years of age and no exception for them can be found in K.S.A. 8-1001 or related statutes, it seems reasonable that legislature intended 8-1001 to apply to all operators of vehicles regardless of age.

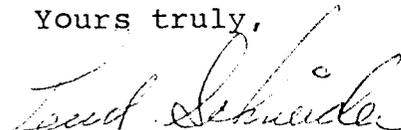
Under the terms of the statute, those deemed to have consented have the capacity to refuse the actual administration of the test, subject to certain adverse consequences. It would follow that normal consequences of notification and possible suspension of driver's license would flow from a minor's refusal.

Several opinions of this office have uniformly interpreted K.S.A. 8-1001 as giving medical facilities the right, under their own policy guidelines, to refuse to administer blood alcohol tests requested by an arresting officer, even though the suspect may have consented. Thus, regardless of the minor's capacity to consent, a medical facility may refuse to administer blood alcohol tests on minors without parent or guardian consent. (See enclosed Attorney General Opinion No. 75-378)

The more difficult question is whether the administrative sanctions of K.S.A. 8-1001 can be invoked upon a guardian's refusal to allow the blood test. Since the minor, under the statute, has the capacity to refuse or acquiesce to the implied consent, it is our opinion that unless the minor himself actually refuses the test, the sanctions of section 8-1001 would not apply upon parental or guardian refusal.

I see no reason for any distinction to be drawn in this regard for the two age groups you posit, since it is our opinion that any person operating a motor vehicle in this state, regardless of age, has this capacity of refusing or acquiescing to the implied consent of section 8-1001. However, whenever the operator of the vehicle is under eighteen years of age, the guardian may, under some circumstances, thwart the smooth operation of the statute.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:RNW:jj

Enclosure