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It is our understanding that certain hospitals within your jurisdictions have adopted a policy of refusing to draw such samples under the above circumstances, even when so directed by law enforcement officers.

K.S.A. 1979 Supp. 8-1001 provides, in pertinent part:

"(a) Any person who operates a motor vehicle upon a public highway in this state shall be deemed to have given consent to submit to a chemical test of breath or blood, for the purpose of determining the alcoholic content of his or her blood whenever he or she shall be arrested or otherwise taken into custody for any offense involving operating a motor vehicle under the influence of intoxicating liquor in violation of a state statute or a city ordinance and the arresting officer has reasonable grounds to believe that prior to arrest the person was driving under the influence of intoxicating liquor. The test shall be administered at the direction of the arresting officer.

"(b) If a law enforcement officer requests the arrested person to submit to a chemical test of blood, the withdrawal of blood at the direction of the officer may be performed only by: (1) a person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person, (2) a registered nurse or a licensed practical nurse, or (3) any qualified medical technician. No person authorized by this subsection to withdraw blood, nor any person assisting in the performance of a blood alcohol test or any hospital wherein such blood is withdrawn or tested that has been directed by any law enforcement officer to withdraw or test blood shall be liable in any civil or criminal action when such act is performed in a reasonable manner according to generally accepted medical practices in the community where performed. No law enforcement officer who is acting pursuant to this section shall be liable for such action in any civil or criminal proceeding involving such action." [Emphasis supplied.]

Prior to examining the question you have presented we believe that it is essential to acknowledge Attorney General Opinion Nos. 74-313, 75-378 and 78-48, all of which consider the question of compelling medical personnel to withdraw blood samples pursuant to K.S.A. 8-1001. Although Opinion Nos. 74-313 and 75-378 reach the conclusion that medical personnel may not be compelled to withdraw blood samples, it is important to note that those opinions were rendered prior to significant amendments to K.S.A. 8-1001 in both 1977 and 1978. With respect to Attorney General Opinion No. 78-48, we believe that the opinion fails to consider these

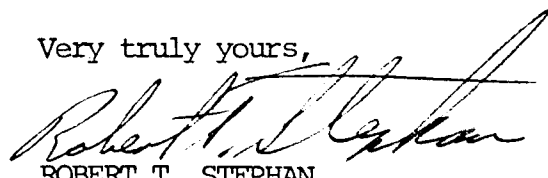
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minors the authority to consent to medical treatment or examination, it is our opinion that the implied consent which is legislatively imposed upon all motor vehicle operators by K.S.A. 1979 Supp. 8-1001 effectively grants similar authority for motor vehicle operators under the age of eighteen (18) years to legally consent to the withdrawal of blood samples under the particular circumstances stated. Just as the public health, safety and welfare justify an exception to the general rule in the other areas covered by the statutes cited, we believe the same considerations provide the basis for an exception in the instant situation. Therefore, it is our opinion that a blood alcohol test may be administered to a consenting minor under K.S.A. 1979 Supp. 8-1001, and that in such cases medical personnel acting in a reasonable manner according to generally accepted medical practices in the community enjoy immunity from liability in any civil or criminal action.

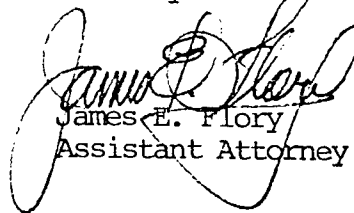
It should be noted that this opinion addresses only the situation wherein the party is in custody and has consented to the withdrawal of blood pursuant to K.S.A. 1978 Supp. 8-1001. We neither address nor consider the withdrawal of blood for purposes or under circumstances other than those set out in the statute.

Although there may be concern as to what sanctions are available should medical personnel continue to refuse administration of blood alcohol tests, we believe that to address that issue would be premature and an unwarranted presupposition of non-compliance. We can only state that it is our belief that the dictates of the statute may be properly enforced through appropriate provisions of the criminal code or the code of civil procedure in the absence of voluntary compliance.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



James E. Flory
Assistant Attorney General

RTS:TDH:JEF:sjw