



STATE OF KANSAS

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September 13, 1982

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ATTORNEY GENERAL OPINION NO. 82- 199

Mr. Edwin A. Van Petten  
Wabaunsee County Attorney  
Courthouse, Third Floor  
Alma, Kansas 66401

Re: Automobiles and Other Vehicles -- Motor Vehicle Drivers'  
License Act -- Reporting of Convictions

Intoxicating Liquors and Beverages -- Transportation of  
Liquor or Cereal Malt Beverage in Open Container --  
Forfeiture of Appearance Bond

Synopsis: The provision of K.S.A. 1981 Supp. 8-253(c) which equates forfeiture of bail, bond or collateral deposited to secure a defendant's appearance to a conviction is inapplicable to K.S.A. 41-804 and 41-2719. For purposes of the Motor Vehicle Drivers' License Act, there is no basis for treating forfeiture of an appearance bond given to secure a person's appearance for an offense under K.S.A. 41-804 or 41-2719 as a conviction under either of these statutes. Cited herein: K.S.A. 1981 Supp. 8-253, 8-2107 (as amended by L. 1982, ch. 47, §1), K.S.A. 41-804, 41-2719.

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Dear Mr. Van Petten:

As County Attorney for Wabaunsee County, you have requested our opinion regarding forfeiture of bonds posted for charges filed under K.S.A. 41-804 and 41-2719. Specifically, you inquire whether the provision of K.S.A. 1981 Supp. 8-253(c), which equates bond forfeiture to a conviction, is applicable to proceedings charging a violation of K.S.A. 41-804 or 41-2719.

K.S.A. 1981 Supp. 8-253 states, in part:

"(a) Whenever any person is convicted of any offense for which this act makes mandatory the suspension of the driver's license of such person by the division, the court in which such conviction is had shall require the surrender to it of all licenses then held by the person so convicted, and the court shall thereupon forward the same, or if such court has a clerk shall direct the clerk of said court to so forward the same, together with a record of such conviction to the division, within ten (10) days from the date the conviction becomes final.

"(b) Every court having jurisdiction over offenses committed under the motor vehicle drivers' license act, shall forward to the division a record of the conviction of any person in said court for a violation of said act. Such record of conviction shall be made upon any form approved by the division and shall include the name and address of the party charged, his or her driver's license number, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment or whether bail or bond forfeited and the amount of fine or forfeiture as the case may be.

"(c) For the purpose of this act, the term 'conviction' shall mean a final conviction and without regard to whether sentence was suspended or probation granted after such conviction. Also, for the purpose of this act, a forfeiture of bail, bond or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction." (Emphasis added.)

In considering the import of this statute, we must be guided by well-established rules of statutory construction. As noted in Johnson v. McArthur, 226 Kan. 128 (1979):

"The fundamental rule of statutory construction, to which all other rules are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes. When a statute is plain and unambiguous the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be." Id. at 135.

Furthermore, the Kansas Supreme Court has noted that it is not the function of the courts to "broaden the plain letter of a statute." State v. One Bally Coney Island No. 21011 Gaming Table, 174 Kan. 757, Syl. ¶2 (1953).

In applying these principles to K.S.A. 1981 Supp. 8-253, it is clear that, by this statute, the legislature has intended to prescribe the circumstances under which certain convictions are to be reported to the Division of Vehicles by the convicting court. And in our judgment, the above-quoted provision of K.S.A. 1981 Supp. 8-253(c) is plain and unambiguous in defining the term "conviction" as the equivalent of bond forfeiture solely "for the purpose of this act." K.S.A. 1981 Supp. 8-253 is a part of the Motor Vehicle Drivers' License Act which is wholly-contained in Article 2 of Chapter 8 of Kansas Statutes Annotated. Accordingly, "conviction" has the broadly-defined meaning accorded it in K.S.A. 1981 Supp. 8-253(c) only when such term is used in 8-253 or the other sections of the Motor Vehicle Drivers' License Act.

On the other hand, K.S.A. 41-804 is a section of the Kansas Liquor Control Act, and K.S.A. 41-2719 is a part of and supplemental to the statutes regulating the sale and consumption of cereal malt beverages. Neither is a part of the Motor Vehicle Drivers' License Act. Hence, a violation of either of these statutes does not constitute an offense "committed under the motor vehicle drivers' license act" and, thus, is not within the purview of K.S.A. 1981 Supp. 8-253(b). Furthermore, neither of these statutes prescribes an offense contemplated by K.S.A. 1981 Supp. 8-253(a), since there is nothing in the Motor Vehicle Drivers' License Act which requires a license be suspended for a violation of either K.S.A. 41-804 or 41-2719. Accordingly, by its plain language, K.S.A. 1981 Supp. 8-253 has no application to either K.S.A. 41-804 or 41-2719, and we have no basis for broadening the scope of K.S.A. 1981 Supp. 8-253 so as to make the definition of "conviction" in subsection (c) thereof applicable to K.S.A. 41-804 and 41-2719.

In passing, we note that K.S.A. 41-804 and 41-2719 both contain discretionary provisions for suspension of a license. Even though K.S.A. 41-804(c) requires a judge to suspend a driver's license upon conviction of illegally transporting liquor, and subsection (d) thereof requires transmittal of the suspended license to the Division of Vehicles, K.S.A. 41-804(f) authorizes the judge to place conditions upon a license in lieu of suspension, and requires the judge to forward the license to the division of vehicles. Similarly, K.S.A. 41-2719(b) requires a judge to suspend a driver's license upon conviction of illegally transporting cereal malt beverages, and subsection (c) requires transmittal of the suspended license to the Division of Vehicles; but K.S.A. 41-2719(f) allows a judge to place conditions on a license in lieu of suspension, and also provides for remitting the license to the Division of Vehicles. However, neither of these statutes addresses the forfeiture of bond or other collateral deposited to secure a person's appearance. Nor does K.S.A. 1981 Supp. 8-2107 (as amended by L. 1982, ch. 47, §1), which provides for the amount of the appearance bond for offenses under K.S.A. 41-804 and 41-2719, provide for the effect of such bond's forfeiture. Thus, in light of this hiatus and our conclusion as to the inapplicability of K.S.A. 1981 Supp. 8-253(c), we find no basis for a court reporting

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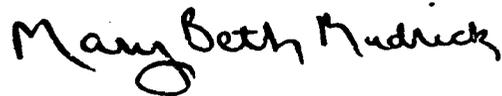
to the Division of Vehicles, for purposes of the Motor Vehicle Drivers' License Act, the forfeiture of an appearance bond, given to secure a person's appearance for an offense under K.S.A. 41-804 or 41-2719, as if it were a conviction.

In conclusion, it is our opinion that the provision of K.S.A. 1981 Supp. 8-253(c) which equates forfeiture of bail, bond or collateral deposited to secure a defendant's appearance to a conviction is inapplicable to K.S.A. 41-804 and 41-2719. For purposes of the Motor Vehicle Drivers' License Act, there is no basis for treating forfeiture of an appearance bond given to secure a person's appearance for an offense under K.S.A. 41-804 or 41-2719 as a conviction under either of these statutes.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



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