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ATTORNEY GENERAL OPINION NO. 85- 7

The Honorable Roy M. Ehrlich
State Senator, Thirty-Fifth District
Route 1, Box 92
Hoisington, Kansas 67544

Re: Automobiles and Other Vehicles -- Maximum Speed Limits --
Certain Violations NOT Matters of Public Record

State Boards, Commissions and Authorities -- State
Highway Commission -- Division of Vehicles; Disclosure
of Records

Synopsis: K.S.A. 1984 Supp 8-1341a provides that speeding convictions for traveling not more than 10 miles per hour in excess of the 55 miles per hour speed limit shall not be part of the public record and shall not be considered by any insurance company in establishing rates for an automobile liability insurance policy or cancelling such coverage. However, the statute does not have the effect of closing any other records concerning arrests, issuance of citations or judicial proceedings. While K.S.A. 1984 Supp. 74-2012(b)(1) and (2) permit the release of information by the division of vehicles or a law enforcement agency to insurers who are processing applications for, or renewing or cancelling, motor vehicle liability insurance policies, such a release involves only information in the public record. As information concerning the convictions specified in K.S.A. 1984 Supp. 8-1341a is not part of the public record, it is not subject to being released under the provisions of K.S.A. 1984 Supp. 74-2012. Cited herein: K.S.A. 8-1001, K.S.A. 1984 Supp. 8-1341a, 21-3914, 45-217, 45-221, 74-2012.

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Dear Senator Ehrlich:

As State Senator for the Thirty-Fifth District, which includes Rice, Barton and Russell Counties, you request our opinion on two questions involving records of convictions for the offense of speeding. Specifically, you inquire concerning the effect of K.S.A. 1984 Supp. 8-1341a, which closes conviction records for offenses involving driving not more than 10 miles per hour in excess of the 55 m.p.h. maximum speed limit. First, you ask whether the statute also closes other records, such as those concerning arrests, issuance of citations or court proceedings, which are developed prior to a conviction, the record of which is closed. Second, you wish to know what effect, if any, the provisions of K.S.A. 1984 Supp. 74-2012 have on K.S.A. 1984 Supp. 8-3141a. The former statute, as amended by the 1984 Legislature, opens records of the division of vehicles for certain purposes, including renewal or cancellation of motor vehicle liability insurance policies.

As enacted by the 1983 Legislature, K.S.A. 1984 Supp. 8-1341a states as follows:

"Convictions under subsection (a)(3) of K.S.A. 8-1336 and amendments thereto for not more than 10 miles per hour in excess of the maximum speed limit shall not be a part of the public record and shall not be considered by any insurance company in determining the rate charged for any automobile liability insurance policy or whether to cancel any such policy under the provisions of subsection (7)(c) of K.S.A. 40-277 and amendments thereto."

A previous opinion of this office, No. 83-117, considered the scope of the statute, and concluded that while it restricted public access to records of conviction for the offense of speeding between 55 and 65 miles per hour, other information mingled with the conviction report which is otherwise public may be disclosed upon request. The opinion went on to state (at page 3):

". . . the language of the bill itself . . . does not require, in our opinion, that court proceedings leading to such convictions be closed to the public. Nor is the bill so broadly drafted as to require any modifications of local court procedures in traffic matters such as public docket calls, receipting procedures for payment of traffic fines or in the issuance of citations, summons or warrants. In our judgment, 1983 Senate

Bill No. 310 is designed to prevent insurance companies from using certain conviction records in rate and coverage determinations. The bill accomplishes this purpose by restricting access to the official records of such convictions at the state and local level. However, the bill does not provide for an absolute bar to public knowledge of law enforcement endeavors or judicial proceedings leading up to the production of the conviction record."

In keeping with the above conclusions, which we affirm, we do not believe that K.S.A. 1984 Supp. 8-1341a has the effect of closing records of arrests, citations or warrants issued, or proceedings concerning the violation prior to the actual conviction. Such records are made public by the terms of the Open Records Act, K.S.A. 1984 Supp. 45-215 et seq., for while criminal investigation records are closed [K.S.A. 1984 Supp. 45-221(a)(10)], traffic offenses are specifically exempted from the definition of criminal investigation records. K.S.A. 1984 Supp. 45-217(b). To the extent that these records are intermixed with the record of conviction, they should be separated and made available to the public upon request. K.S.A. 1984 Supp. 45-221(c).

Your second inquiry concerns the possible effect of K.S.A. 1984 Supp. 74-2012 upon K.S.A. 1984 Supp. 8-1341a. In pertinent part, the former statute now states:

"(a) All records of the division of vehicles relating to the physical or mental condition of any person, or to expungement or diversion agreements, shall be confidential.

"All other records of the division of vehicles shall be subject to the provisions of L. 1984, ch. 187 except as otherwise provided by this section.

"(b) Lists of persons' names and addresses contained in or derived from records of the division of vehicles shall not be sold, given or received for the purposes prohibited by K.S.A. 1984 Supp. 21-3914 except that:

"(1) The director of vehicles may provide to a requesting party, and a requesting party may receive, such a list and accompanying information from public records of the division upon written certification that the requesting party

shall use the list solely for the purpose of (A) assisting manufacturers of motor vehicles in compiling statistical reports or in notifying owners of vehicles believed to (i) have safety-related defects, (ii) fail to comply with emission standards or (iii) have any defect to be remedied at the expense of the manufacturer; or (B) assisting an insurer authorized to do business in this state, or the insurer's authorized agent, in processing an application for or renewal or cancellation of, a motor vehicle liability insurance policy.

"(2) Any law enforcement agency of this state which has access to public records of the division may furnish to a requesting party, and a requesting party may receive, such a list and accompanying information from such records upon written certification that the requesting party shall use the list solely for the purpose of assisting an insurer authorized to do business in this state, or the insurer's authorized agent, in processing an application for, or renewal or cancellation of, a motor vehicle liability insurance policy.
(Emphasis added.)

Several observations may be made regarding the above provisions. First, the "list" which is referred to in paragraphs 1 and 2 of subsection (b) is a list of names and addresses derived from the records of the division of motor vehicles. Such a list, together with "accompanying information" may be released to an insurer or its agent for use in processing applications for, or renewal or cancellation of, motor vehicle liability insurance policies. For example, an insurer could presumably request the division of vehicles to provide it with a list of those persons who had had their drivers' licenses suspended during the last six months for failure to take a breath or blood test for the presence of alcohol under K.S.A. 8-1001.;

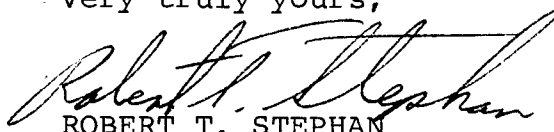
Second, the lists and accompanying information discussed by this statute are to be derived from "public records" held by the division of vehicles. In that K.S.A. 1984 Supp. 8-1341a has the effect of closing records of certain convictions for speeding, such records are no longer "public" and so are not subject to the terms of K.S.A. 1984 Supp. 74-2012. The two statutes are not in conflict, and may be construed so as to give effect to both, which is the preferred result. Capital Services, Inc. v. Dahlinger Pontiac-Cadillac, 232 Kan. 419, 422 (1983).

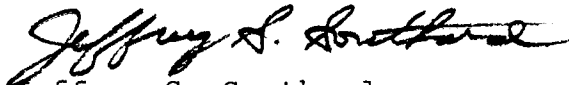
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Finally, the information which is obtainable from the division of vehicles, either directly or through a law enforcement agency, may be used only for those purposes set forth by paragraphs (1) and (2) of K.S.A. 1984 Supp. 74-2012(b). Reference is made in the statute to K.S.A. 1984 Supp. 21-3914, which provides criminal penalties for persons who "knowingly sell, give or receive, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records." While the criminal statute exempts K.S.A. 1984 Supp. 74-2012, the latter statute by its own terms requires a requesting party to provide written certification that the information obtained will be used only for the limited purposes set forth therein. As long as these restrictions are observed, it appears that such lists could be sold and received, contrary to the general prohibition against such actions found in K.S.A. 1984 Supp. 21-3914.

In conclusion, K.S.A. 1984 Supp. 8-1341a provides that speeding convictions for traveling not more than 10 miles per hour in excess of the 55 miles per hour speed limit shall not be part of the public record and shall not be considered by any insurance company in establishing rates for an automobile liability insurance policy or cancelling such coverage. However, the statute does not have the effect of closing any other records concerning arrests, issuance of citations or judicial proceedings. While K.S.A. 1984 Supp. 74-2012(b)(1) and (2) permit the release of information by the division of vehicles or a law enforcement agency to insurers who are processing applications for, or renewing or cancelling, motor vehicle liability insurance policies, such a release involves only information in the public record. As information concerning the conviction specified in K.S.A. 1984 Supp. 8-1341a is not part of the public record, it is not subject to being released under the provisions of K.S.A. 1984 Supp. 74-2012.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw