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ATTORNEY GENERAL OPINION NO. 85-158

Rose Marino
Associate General Counsel
Office of the General Counsel
Strong Hall, University of Kansas
Lawrence, Kansas 66045

Re: Automobiles and Other Vehicles -- Drivers' Licenses
-- Persons to Whom Licenses Not Issued; Denial of
Driving Privileges Due to Seizure Disorders

Synopsis: The Division of Vehicles of the Department of
Revenue may not deny, refuse to renew, or suspend a
driver's license based on an applicant's seizure
disorders which are controlled by medication
without first receiving an opinion from the medical
advisory board that the particular applicant is
likely to be a danger to himself or others while
driving. Cited herein: K.S.A. 8-237; K.S.A. 1984
Supp. 8-247; 8-254; 8-255; K.S.A. 8-255c.

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Dear Ms. Marino:

As Associate General Counsel of the University of Kansas, you request our opinion concerning the legality of a policy of the Division of Vehicles of the Department of Revenue which denies drivers licenses to all persons who have had a seizure within the last twelve months. This policy is described as "informal" in the sense that it does not appear in any administrative rule or regulation of the division of vehicles.

K.S.A. 8-237(e) provides:

"The division of vehicles shall not issue any driver's license to any person . . . know to have suffered any seizure disorder, until the procedure specified in subpart (7) of subsection (f) of K.S.A. 8-247, and amendments thereto, has been complied with."

That subsection, now at K.S.A. 1984 Supp. 8-247(e)(7), states:

"Seizure disorders which are controlled by prescribed medication shall not be considered a disability under the preceding subpart unless the medical advisory board finds that the applicant's condition is such that the applicant is likely to be a danger to such applicant or others, while operating a motor vehicle."

The "preceding subpart" provides:

"(6) When the division has good cause to believe that an applicant for renewal of a driver's license is incompetent or otherwise not qualified to operate a motor vehicle in accord with the public safety and welfare, the division may require such applicant to submit to such additional examinations as are necessary to determine that the applicant is qualified to receive the license applied for. Subject to subpart (7) of this subsection (e), in so evaluating such qualifications, the division may request an advisory opinion of the medical advisory board which is hereby authorized to render such opinions in addition to its duties prescribed by subsection (b) of K.S.A. 8-255b. Any such applicant who is denied the renewal of such person's driver's license because of a mental or physical disability shall be afforded a hearing in the manner prescribed by subsection (b) of K.S.A. 8-255.

It is clear that when a person is applying for an original driver's license or for a renewal thereof, that person must be

physically able to operate a motor vehicle in accord with the public safety and welfare. Additionally, the division is authorized to suspend a person's driver's license upon a showing by its records or other sufficient evidence that the licensee is "incompetent to drive a motor vehicle." K.S.A. 1984 Supp. 8-255(a)(3). From our review of these statutes, we believe that the same procedure is to be followed when a person alleged to have a seizure disorder is applying for an original driver's license, is applying for renewal of a license, or is undergoing a suspension review.

First, the division must have "good cause" to believe that the applicant has experienced seizure disorders. Information concerning such disorders may be gathered from the division's own records, K.S.A. 1984 Supp. 8-255(a); from third parties who report such information to the division in good faith, K.S.A. 8-255c, from the applicant himself, or from other "sufficient evidence." If the division has "good cause" to believe that the applicant has experienced seizure disorders, it shall ascertain whether such seizure disorders are "controlled by prescribed medication." Where seizure disorders are so controlled, the division may not refuse to issue or renew a driver's license unless and until the medical advisory board makes a finding that the applicant's condition is such that the applicant poses a threat to the applicant's own safety or that of others while driving. K.S.A. 1984 Supp. 8-247(e)(7).

In conclusion, K.S.A. 1984 Supp. 8-247(e)(7) mandates that the medical advisory board review an individual's case before the division of vehicles may deny driving privileges of an applicant due to "seizure disorders" which have been controlled by medication. To the extent that the division's policy contradicts this legislative mandate, and allows the division to forego seeking individual determinations from the medical advisory board, it is unauthorized and hence unenforceable.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Kathryn Gardner
Assistant Attorney General