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ATTORNEY GENERAL OPINION NO. 86- 144

Colonel Bert Cantwell  
Kansas Highway Patrol  
122 S.W. Seventh Street  
Topeka, Kansas 66603-3847

Re: Automobiles and Other Vehicles--Uniform Act  
Regulating Traffic; Rules of the Road--When Passing  
on the Right Permitted

Synopsis: K.S.A. 8-1517 prohibits passing another vehicle on  
the right where the movement involves driving off  
of the roadway and on to the shoulder. Based upon  
the information presented for our review, the  
statute would seem to prohibit southbound vehicles  
from passing on the right where K-113 is  
intersected by Farm Bureau Road on the east. Cited  
herein: K.S.A. 8-1459; 8-1517; 8-2003.

\* \* \*

Dear Colonel Cantwell:

As Superintendent for the Kansas Highway Patrol, you request  
our interpretation of K.S.A. 8-1517 in a specific situation.  
You advise that requests have been made for clarification of  
this statute in its application to southbound vehicles on  
K-113 where that highway is intersected by Farm Bureau Road on  
the east in Riley County.

K.S.A. 8-1517 outlines the conditions under which overtaking  
and passing upon the right of another vehicle is permitted.  
The listed condition relevant to your concern allows passing  
on the right when the vehicle overtaken is making or about to

make a left turn. K.S.A. 8-1517(a)(1). K.S.A. 8-1517(b) then proceeds to qualify subsection (a) by restricting such passing "to conditions permitting such movement in safety." This qualification is further clarified in the next sentence which states, "such movement shall not be made by driving off the roadway."

In order to determine whether K.S.A. 8-1517(a)(1) allows for passing on the right in the situation described by your inquiry, it is necessary to define the term "roadway." K.S.A. 8-1459 defines roadway as ". . . that part of the highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder." (Emphasis added.)

Although we did not conduct an investigation of the particular site, it appears from the information provided that the blacktop pavement between the solid white line and the grassy area constitutes a paved shoulder. Thus, the statutes, when read together, would prohibit passing on the right in this instance unless the vehicle passing could do so without crossing the white edge line. You indicate that at the intersection in question, K-113 consists of two twelve-foot-wide driving lanes (a two-lane road) which would seem to preclude automobiles from passing on the right without crossing the white edge line.

Our opinion is buttressed by the Federal Department of Transportation and Federal Highway Administration Manual on Uniform Traffic Control Devices (M.U.T.C.D.) for Streets and Highways (adopted by the Secretary of Transportation pursuant to K.S.A. 8-2003), which states that solid white lines are used ". . . to mark the right edge of the pavement." The M.U.T.C.D. goes on in section 3B-6 (Pavement Edge Lines) to say that these edge lines ". . . may be used where edge delineation is desirable to reduce driving on paved shoulders or refuge areas of lesser structural strength than adjacent pavement." From the information provided to us, this seems to be the nature of the blacktop area described. As a paved shoulder, this area is excluded from "the roadway," as that term is defined in K.S.A. 8-1459.

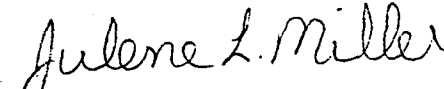
In conclusion, K.S.A. 8-1517 prohibits passing another vehicle on the right where that movement involves driving off of the roadway and on to the shoulder. Based upon the information

presented for our review, the statute would seem to prohibit southbound vehicles from passing on the right where K-113 is intersected by Farm Bureau Road on the east.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm