

FILE

Subject

*Transportation auto
Regulation - Regulations*

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

June 4, 1974

Opinion Number 74- 174

Dr. C. Taylor Whittier
Commissioner of Education
Department of Education
120 East 10th Street
Topeka, Kansas 66612

RE: Our File No. AG-63-82-3

Dear Doctor Whittier:

This letter is in response to your letter of April 5, 1973, which requested an opinion concerning federal and state regulations on automobile odometers.

I refer you to K.S.A. 1972 Supp. 8-611 which states that it is unlawful for any person to sell or convey a motor vehicle knowing that the odometer has been disconnected, turned back, reset, replaced or made inoperative with the intent and for the purpose of defrauding a purchaser, and furthermore it shall be unlawful for any person to disconnect, turn back, reset or replace the odometer with the intent to reduce the number of miles or use thereof indicated on such gauge or device.

In addition, I would like to refer you to K.S.A. 1972 Supp. 8-135(c)(2) which states that the certificate of title which is passed with every sale of a used vehicle shall contain on the reverse side blank spaces so that an abstract of mileage as to each owner will be available. The seller at the time of each sale shall insert the mileage on the form filed for application or reassignment of title. I have, of course, paraphrased the statutes but I believe them to say essentially that which I have indicated and I also feel that K.S.A. 1972 Supp. 8-135 is in accord with the 1973 federal legislation requiring motor vehicle odometer disclosure statements. As I understand your letter, the installation of a special odometer is required in a certain number of vehicles operated by the Kansas State Department of Education so that certain special mileage readings can be obtained to support the requirements of K.S.A. 72-8308 and 72-8304, the mileage payment for transportation of students to and from school where bus transportation is not available. You state that by adding what is registered on the original factory installed odometer and that which is continuously recorded on the special odometer an accurate reading of the total mileage on a given vehicle can be ascertained.

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It is our opinion that if proper measures have been effected so that an accurate odometer reading can be provided on the certificate of title at time of sale or transfer, the spirit and intent of the Kansas Statutes cited and of the federal law have been met. K.S.A. 1973 Supp. 8-611 speaks of an "intent and . . . purpose of defrauding a purchaser." If an accurate mileage reading is provided a subsequent purchaser at a time when each of these vehicles is sold, then the intent of the statute is fulfilled and in fact there is no actual fraud performed upon any purchaser. Certainly when your personnel disconnect an odometer under your direction for the purpose of installing a more precise odometer, then relative to the original odometer, you do not violate the statutory prohibition against disconnecting "with the intent to reduce the number of miles or use thereof indicated on such gauge or device." I would suggest that the number of vehicles equipped with special odometers be limited to minimize any inadvertent error in the maintaining of accurate mileage records. I would also suggest that your department consider resetting the odometers, if feasible, to reflect the vehicle's actual mileage.

You will find enclosed with this letter a copy of correspondence received from the U. S. Department of Transportation in response to our request that they interpret the federal law on the subject for us. I believe you will find the response of Richard B. Dyson, Assistant Chief Counsel, to be in accordance with the general interpretation which I have provided you relative to Kansas statutory law.

I hope this information will be of service to you and that it adequately answers the issues which you have raised.

Very truly yours,



VERN MILLER
Attorney General

VM:JPO:be