



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 18, 1977

ATTORNEY GENERAL OPINION NO. 77-128

Ms. Shelley D. G. Bloomer
Osborne County Attorney
Osborne County Courthouse
Osborne, Kansas 67473

Re: Regulation of Watercraft--Prohibited Operations--Violations

Synopsis: K.S.A. 1976 Supp. 82a-810a(a) prohibits operation of motor boat on any waters in this state with a motor or other propulsion machinery having a maximum horsepower capability beyond the maximum horsepower of the motor such vessel was designed or intended to accommodate as reflected by the vessel's "capacity plate." Violations of said act are prosecutable under K.S.A. 1976 Supp. 82a-819(a).

* * *

Dear Ms. Bloomer:

You inquire whether the provisions of K.S.A. 1976 Supp. 82a-810a(a) prohibit the operation of a boat with a motor having a stated maximum horsepower in excess of the maximum horsepower capacity of the motor the vessel was designed or intended to accommodate as reflected by a boat's "capacity plate."

K.S.A. 1976 Supp. 82a-810a(a) provides in part thus:

"No person shall operate any vessel on any waters of this state carrying passengers, cargo or equipment beyond the safe carrying

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capacity of the vessel, or powered or equipped with any motor or other propulsion machinery beyond its safe power capacity, taking into consideration the type and construction of such vessel and other existing operating conditions." [Emphasis added.]

There is no specific definition for "safe power capacity" expressed in the above language; however a definition is unequivocally implied by the purpose of the act and the provisions of paragraph (b) which in pertinent part provides:

"Every vessel less than twenty-six (26) feet in length designed to carry two (2) or more persons and to be propelled by machinery as its principal source of power or designed to be propelled by oars, if manufactured or offered for sale in this state by the manufacturer after January 1, 1971, shall have permanently affixed thereto by the manufacturer a capacity plate as required by this section. Such capacity plate shall bear the following:

(1) For all vessels designed for or represented by the manufacturer as being suitable for use with outboard motor.

* * *

(d) The maximum horsepower of the motor the vessel is designed or intended to accommodate."

The apparent intent of the statute is to control the operation of such vessels as fall within the act's purview to meet the safety parameters placed upon the vessels and machinery designed to propel them by the manufacturer. What this language essentially provides then is a rebuttable presumption that the maximum horsepower of the motor the vessel is designed or intended to accommodate as reflected by the "capacity plate" is in fact the "safe power capacity," for which a violator may be criminally prosecuted under K.S.A. 82a-819(a) which in part states:

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"Any person who violates any provision of . . . [82a-810a] . . . or any rule or regulation of the commission shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed fifty dollars (\$50) for each such violation."

The language of the penalty statute is clear and unambiguous. Accordingly, it is the opinion of this office that anyone operating a motor boat on any waters in this state with a motor or other propulsion machinery where the maximum horsepower for such motor or propulsion machinery exceeds the maximum horsepower of the motor the vessel is designed or intended to accommodate as reflected on such boat's "capacity plate" would be in violation of K.S.A. 1976 Supp. 82a-810a and therefore prosecutable pursuant to K.S.A. 1976 Supp. 82a-819(a).

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JPS:kj

cc: Mr. Jerry Conley
Director
Kansas Forestry, Fish and Game Commission
Post Office Box 1028
Pratt, Kansas