



STATE OF KANSAS

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Attorney General

October 12, 1977

ATTORNEY GENERAL OPINION NO. 77- 336

The Honorable Patrick B. Augustine
State Representative
713 Ross Street
Ellis, Kansas 67637

Re: Park and Resources Authority--Fees--Exemption

Synopsis: K.S.A. 1976 Supp. 74-4509(b)(5), which exempts persons 65 years of age and older from park and recreation motor vehicle permit fees, is not unconstitutionally discriminatory against persons under 65 years of age who are required to pay such fees.

* * *

Dear Representative Augustine:

K.S.A. 1976 Supp. 74-4509a provides for the issuance of park and recreation motor vehicle permits for vehicles used in state parks. Subsection (b)(2) prescribes the fee for such annual permits, on and after January 1, 1977, at ten dollars, and two dollars for a second vehicle permit. Temporary permits, issued for one day, shall be one dollar. Subsection (b)(5) states thus:

"No original annual or temporary park and recreation motor vehicle permit fee shall be required by the authority to be paid by any certificate of titleholder who is sixty-five (65) years of age or older or who is disabled as the same is defined by K.S.A. 1976 Supp. 79-4502(g). Any such certificate of titleholder may request a special permit or pass which shall be issued by the authority to any such titleholder."

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You advise that you have received several inquiries whether the quoted provision is unconstitutionally discriminatory on the basis of age. In effect, the question is raised whether the statute arbitrarily and unlawfully discriminates against persons under 65 years of age by denying to them the free permits which are available without cost to persons 65 years or older.

"If the classification provided is arbitrary . . . and has no reasonable relation to objects sought to be attained," the legislature has exceeded its power. Tri-State Hotel Co. v. Londerholm 195 Kan. 748 at 760, 408 P.2d 864 (1965). In that case, the court outlined the criteria by which any given legislative classification should be judged:

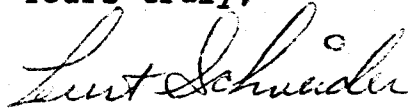
"In determining whether a classification in a statute enacted under the police power is reasonable, the following guidelines appear evident from the decisions of this court:
(1) A classification having some reasonable basis does not offend . . . [the constitution] merely because it is not made with mathematical nicety or because in practice it results in some inequality; (2) there is no precise application of the rule of reasonableness of classification, and the rule of equality permits many practical inequalities -- in a classification for governmental purposes there need not be an exact exclusion or inclusion of persons and things; (3) if any state of facts reasonably can be conceived that would sustain the Act, their existence at the time the law was enacted must be presumed; (4) within the zone of doubt and fair debate, the legislative determination is conclusive upon the court and must be upheld, and (5) one who assails the classification must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." 195 Kan. at 760-761.

The exemption from fees is based, presumptively, upon a legislative recognition that persons who are 65 and over commonly have reduced and relatively fixed incomes, and limited money available for recreational use. The fee exemption represents a legislative effort to alleviate the resulting straitened circumstances commonly

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facing persons in that age in some small measure by providing access to public state park and recreation areas without charge. This is, obviously, a permissible legislative purpose, and the classification of persons exempt from the fee, those who are disabled and those 65 and over, is clearly reasonably related to that classification. It is not, in my judgment, an arbitrary or unreasonable classification, and its reasonableness is not altered by the fact that other low income persons under age 65 do not enjoy the benefit of the exemption.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj