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ATTORNEY GENERAL OPINION NO. 79- 148

Mr. Robert Mikesic, Consultant
Committee on Employment of the Handicapped
Department of Human Resources
State Office Building, 126 South
Topeka, Kansas 66625

Re: Automobiles and other Vehicles---Registration of Vehicles---
Identification Cards for Handicapped Persons---K.S.A. 1978 Supp. 8-132a

Synopsis: The secretary of revenue may provide for issuance of duplicate identification cards by regulation. The fee for a duplicate identification card must be prescribed by regulation and may not exceed the actual cost of issuance.

Dear Mr. Mikesic:

You inquire whether the director of vehicles may issue duplicates of the special identification cards provided for in K.S.A. 1978 Supp. 8-132a and, if so, the fee to be charged.

K.S.A. 1978 Supp. 8-132a provides in pertinent part:

- (b) Any person who submits satisfactory proof to the director of vehicles, in accordance with rules and regulations adopted by the secretary of revenue, that such person is a handicapped person or is responsible for the transportation of a handicapped person shall be issued by the director of vehicles a special license plate for any motor vehicle owned by such person

or a temporary or permanent identification card to be suspended from the rear view mirror of any motor vehicle used for the transportation of a handicapped person. * * *

(c) * * *

(d) Identification cards issued pursuant to this section shall be issued for such period of time as the person to whom issued continues to be a handicapped person or a person responsible for the transportation of a handicapped person, as determined in accordance with procedures established by rules and regulations of the secretary of revenue for periodic determination of continued eligibility. The secretary of revenue may prescribe, by rules and regulations, a fee for identification cards issued pursuant to this section, which shall not exceed the actual cost of issuance thereof.

(e) * * *

(f) * * *

(g) The secretary of revenue shall adopt such rules and regulations as necessary for the administration of this section.

There are two factors having a bearing on your query. First, as you noted, there are no provisions in the statute relating to issuance of duplicate cards. Second, there are no regulations concerning the administration of the statute.

The absence of specific statutory authorization to issue duplicate identification cards does not preclude the director of vehicles from issuing duplicates. He may provide for duplicate identification cards by regulations. An administrative body may not exceed the scope of its statutory authority and the validity of a rule or regulation hinges upon whether the agency was empowered to adopt the rule. 2 Am.Jur.2d Administrative Law, Sec. 296.

Kansas follows these rules. In Marcotte Realty and Auction, Inc. v. Schumacher, 225 Kan. 193, 196, (1979), the court wrote:

The power to adopt rules and regulations is administrative in nature and in order to be valid must be within statutory authority. If the regulation goes beyond that which the legislature has authorized or it violates the statute, it is void.

Other recent Kansas cases on the subject are: Goertzen v. State Department of Social and Rehabilitation Services, 218 Kan. 313 (1975); Hartman v. State Corporation Commission, 215 Kan. 758 (1974); Amoco Production Co. v. Arnold, Director of Taxation, 213 Kan. 636 (1974); and State, ex rel. v. Columbia Pictures Commission, 197 Kan. 448.

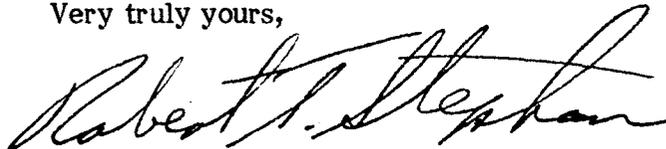
The secretary of revenue is specifically empowered to promulgate regulations to administer the program of issuance of special license plates and identification cards. (K.S.A. 1978 Supp. 8-132a(g)). The apparent legislative intent of the statute is that handicapped persons have a means of identifying their vehicles so they may avail themselves of the specially designated parking areas or have unlimited free metered parking at all times. There is provided an option as to the manner in which a vehicle may be marked. Either a special license plate or a special identification card may be obtained. In the event a special license plate is lost, destroyed, or stolen, a duplicate may be obtained under the provisions of K.S.A. 8-139. It would be unreasonable to presume that because the legislature made no specific provision in the statute for duplicate identification cards that none could be issued, particularly in view of the apparent legislative intent and the fact that duplicate license plates may be obtained. Thus, it is our opinion the secretary of revenue may adopt rules and regulations relating to the issuance of duplicate identification cards and such regulations are within the scope of authority conferred upon the secretary by K.S.A. 1978 Supp. 8-132a(g).

Having determined that the secretary of revenue may issue duplicate identification cards under appropriate regulations, what fee may be charged? K.S.A. 1978 Supp. 8-132a(d) is clear on this point: "The secretary may prescribe, by rules and regulations, a fee for the issuance of identification cards . . . which shall not exceed the cost of issuance thereof."

Thus, the fee prescribed for either an original or a duplicate may not exceed the cost of issuing the card. The fee, required by K.S.A. 1978 Supp. 8-132a(d) for the issuance of the identification card is to be prescribed by rules and regulations promulgated by the Secretary of Revenue. The Secretary of Revenue, with respect to issuance of a duplicate identification card may set the fee therefore at any amount so long as it does not exceed the actual cost of issuance.

We regret the delay in sending this opinion to you and hope it satisfactorily answers your questions. If this office may be of further assistance, please do not hesitate to contact us.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Kenneth P. Hackler
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RTS:BEM:KPH:MC