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February 26, 1981

ATTORNEY GENERAL OPINION NO. 81-55_____.

Joseph E. King, Director
Kansas Energy Office
214 W. 6th Street
Topeka, Kansas 66603

Re: Public Utilities--Powers of State Corporation Commission
--Regulation of Motor Carriers

Synopsis: In light of well-established rules of statutory construction, the literal import of the provisions of subsection (k) of K.S.A. 66-1,109 must be disregarded to some extent, and that subsection must be interpreted as providing an exemption from the state corporation commission's regulation to those persons who operate the multi-passenger motor vehicles specified therein. Furthermore, that subsection's exclusion of certain "individuals" from such exemption applies only to natural persons and does not apply to corporations, partnerships, associations or other artificial persons. Cited herein: K.S.A. 66-1,108, 66-1,109, 66-1,111, 66-1,146.

* * *

Dear Mr. King:

You have asked us to determine the applicability of subsection (k) of K.S.A. 66-1,109 to "employer-owned, not-for-profit vanpools."

K.S.A. 66-1,109 was first enacted in 1931 (L. 1931, ch. 236, §2) as part of a comprehensive enactment providing for the regulation of motor carriers by the state corporation commission. That enactment,

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as it has been amended from time to time, is codified at K.S.A. 66-1,108 et seq. The scope of this statutory sequence is expressed by K.S.A. 66-1,111:

"No public motor carrier of property or passengers, contract motor carrier of property or passengers for hire or private motor carrier of property or local cartage carrier shall operate any motor vehicle for the transportation of either persons or property on any public highway in this state except in accordance with the provisions of this act, the act of which this act is amendatory and other applicable laws."

It is to be noted that "public motor carrier of property," "public motor carrier of persons," "contract motor carrier of property," "contract motor carrier of passengers" and "private motor carrier of property" are terms defined by subsections (e), (f), (g), (h) and (i), respectively, of K.S.A. 66-1,108, and "local cartage carrier" is defined by K.S.A. 66-1,146. Without burdening this opinion by quoting these definitions, suffice it to state that each of these terms is defined in reference to a "person" who is engaged in the transportation by motor vehicle of either persons or property. Thus, as expressed by K.S.A. 66-1,111, the legislative purpose underlying K.S.A. 66-1,108 et seq. is to regulate the operation of motor vehicles by these persons on public highways. We also note that "person" is defined for the purpose of this statutory sequence by K.S.A. 66-1,108(d) as meaning "any individual, firm, copartnership, corporation, company, association or their lessees, trustees, or receivers."

It is within this context that we consider your inquiry regarding K.S.A. 66-1,109. By specifying what the provisions of K.S.A. 66-1,108 et seq. "shall not apply to," this statute's obvious purpose is to provide exemptions from the corporation commission's regulation. Apparently occasioned by legislative findings of necessity to add to or modify the exemptions contained therein, K.S.A. 66-1,109 has been amended a substantial number of times since its enactment in 1931. Unfortunately, by reason of these periodic amendments, this statute also reflects a rather piecemeal and haphazard development. As we noted above, the purpose of K.S.A. 66-1,108 et seq. is the regulation of certain persons engaged in transporting persons or property; however, in several instances K.S.A. 66-1,109 purports to exempt motor vehicles from such regulation. One such instance is subsection (k), which provides for the exemption of

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"any motor vehicle with a normal seating capacity of not more than the driver and sixteen adult passengers while used not for profit in transporting persons who, as a joint undertaking, bear or agree to bear, all the costs of such operations, or motor vehicles with a normal seating capacity of not more than the driver and sixteen adult passengers in transporting only bona fide employees to and from the factory, plant or other place of like nature where they are all employed or accustomed to work. This subsection shall not apply to any individual so operating in excess of one motor vehicle"
(Emphasis added.)

Not only is this subsection's exemption of motor vehicles inconsistent with the act's purpose of regulating persons, the entirety of this subsection creates a non sequitur. That is, while the first sentence provides for the exemption of specified motor vehicles, the emphasized portion of the above-quoted provisions purports to exclude certain individuals from the purview of that exemption. Arguably, the resulting ambiguity renders this subsection incapable of interpretation. While such conclusion is tempting, in light of legislative inattention to providing a clear statement of the intended exemption in plain and unambiguous language, we believe that the application of well-established rules of statutory construction yields an interpretation of the legislature's intended meaning, such that the validity of the subsection can be upheld.

Of particular relevance are the rules of construction reiterated in Brown v. Keill, 224 Kan. 195 (1978), where the Court stated:

"The fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute, even though words, phrases or clauses at some place in the statute must be omitted or inserted. (Farm & City Ins. Co. v. American Standard Ins. Co., 220 Kan. 325, Syl. ¶3, 552 P.2d 1363 [1976].) In determining legislative intent, courts are not limited to a mere consideration of the language used, but look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished and the

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effect the statute may have under the various constructions suggested. (State, ex rel., v. City of Overland Park, 215 Kan. 700, Syl. ¶10, 527 P.2d 1340 [1974].) In order to ascertain the legislative intent, courts are not permitted to consider only a certain isolated part or parts of an act but are required to consider and construe together all parts thereof in pari materia. When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the literal import of words or phrases which conflict with the manifest purpose of the legislature. (Kansas Commission on Civil Rights v. Howard, 218 Kan. 248, Syl. ¶2, 544 P.2d 791 [1975].)" (Emphasis added.) 224 Kan. at 199, 200.

Applying these rules to subsection (k), it is apparent that this statutory subpart cannot be considered in isolation. It must not only be construed within the context of the statute of which it is a part, but it also must be construed as being in pari materia with the other sections of K.S.A. 66-1,108 et seq. Construing together statutes in pari materia to determine legislative intent is done with a view toward reconciling and harmonizing the provisions of these various statutes. Callaway v. City of Overland Park, 211 Kan. 646, 650 (1973). And as commanded by Brown v. Keill, supra, such intent is to be ascertained from the statute, "even though words, phrases or clauses at some place in the statute must be omitted or inserted." Id.

It is apparent that where there is a comprehensive statutory scheme for the regulation of persons, any exemption therefrom must also apply to persons who, were it not for such exemption, would be subject to such regulation. With this in mind, and guided by the rules of construction recited herein, we are compelled to the conclusion that, to have any meaning within the context of K.S.A. 66-1,108 et seq., the exemption afforded by subsection (k) must be construed as an exemption of persons who operate the types of motor vehicles designated therein for the transportation of certain specified passengers.

Specifically, it is our opinion that K.S.A. 66-1,109(k) exempts from regulation by the state corporation commission persons who either operate the multi-passenger motor vehicles described therein for the

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purpose of transporting persons who share the costs of such transportation, or who operate such motor vehicles for the purpose of transporting employees to and from work. Even though such interpretation has required a disregard of the literal import of certain language of this statutory subsection, and also has necessitated the insertion of additional language, we believe that a failure to interpret subsection (k) in this manner would produce a result entirely inconsistent with the manifest purpose of K.S.A. 66-1,109 in carrying out the statutory scheme envisioned by K.S.A. 66-1,108 et seq.

Having reached this conclusion, there remains for consideration the extent of such exemption. In this connection, you have asked whether the emphasized portion of subsection (k), as previously quoted herein, is intended to preclude partnerships, corporations, associations or other artificial persons from the exemption afforded by this subsection. That provision excludes from the exemption "any individual" who operates more than one of the passenger vehicles specified in that subsection, and your question requires our interpretation of "individual."

We previously quoted the definition of "person" in K.S.A. 66-1,108(d). This definition is applicable throughout the succeeding sections in this statutory sequence, including K.S.A. 66-1,109, and it is to be noted that an "individual" is included in this definition in obvious contradistinction of the other business entities also so included. It also must be recognized that in other subsections of 66-1,109 the legislature has used the all-inclusive term "person" in specifying various other exemptions. For these reasons, it is our opinion that the term "individual" used in 66-1,109(k) is limited to a natural person and does not include within its scope any artificial person.

We believe our opinion reflects the commonly understood meaning of "individual." As stated in Black's Law Dictionary (Rev. 4th Ed.), 913:

"[T]his term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association; but it is said that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons."

Also, from Webster's Third New International Dictionary we note that a primary meaning for "individual" is "a single human being as contrasted with a social group or institution." Id. at 1152. Thus, while this

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term may under proper circumstances denote an artificial person, such as a corporation or partnership, it is commonly understood as including only a natural person within its scope. Absent any special circumstances, therefore, we are constrained from attributing a broader meaning to the term in this instance, which is consistent with the following statement of the Kansas Supreme Court:

"A primary rule for the construction of a statute is to find the legislative intent from its language, and where the language used is plain and unambiguous and also appropriate to the obvious purpose the court should follow the intent as expressed by the words used and is not warranted in looking beyond them in search of some other legislative purpose or extending the meaning beyond the plain terms of the Act. (Alter v. Johnson, 127 Kan. 443, 273 Pac. 474; Hand v. Board of Education, 198 Kan. 460, 426 P.2d 124; City of Overland Park v. Nikias, 209 Kan. 643, 498 P.2d 56; Hunter v. Haun, 210 Kan. 11, 499 P.2d 1087.)" City of Kiowa v. Central Telephone & Utilities Corporation, 213 Kan. 169, 176 (1973).

Of similar import is the Court's pronouncement in Lakeview Gardens, Inc. v. State, ex rel. Schneider, 221 Kan. 211 (1976):

"[T]his court must ascertain and give effect to the intent of the legislature. In so doing we must consider the language of the statute; its words are to be understood in their plain and ordinary sense. (Hunter v. Haun, 210 Kan. 11, 13, 499 P.2d 1087; Roda v. Williams, 195 Kan. 507, 511, 407 P.2d 471.) When a statute is plain and unambiguous this court must give effect to the intention of the legislature as expressed rather than determine what the law should or should not be. (Amoco Production Co. v. Arnold, Director of Taxation, 213 Kan. 636, 647, 518 P.2d 453; Jolly v. Kansas Public Employees Retirement System, 214 Kan. 200, 204, 519 P.2d 1391.)" 221 Kan. at 214.

It is clear from the foregoing judicial pronouncements that the rules of construction created in Brown v. Keill, *supra*, and relied upon by us in determining the legislature's intent underlying the exemption provided by 66-1,109(k), can have application only where the statutory language creates an ambiguity. Where, however, the language is clear

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and unambiguous and is appropriate to an obvious legislative purpose, there is no justification for looking beyond such language to determine legislative intent. Thus, we find no basis for disregarding the popular and commonly understood meaning of "individual."

Moreover, we note the judicial principle that where the legislature uses different words it is to be presumed that different meanings were intended. This principle was elaborated upon in Rogers v. Shanahan, 221 Kan. 221 (1977), as follows:

"When, as here, the resolution of a question requires construing a statute, the court is guided by certain presumptions. It is presumed the legislature understood the meaning of the words it used and intended to use them; that the legislature used the words in their ordinary and common meaning; and that the legislature intended a different meaning when it used different language in the same connection in different parts of a statute." Id. at 223, 224.

Here, the legislature has defined "person" as including partnerships, corporations, associations and other artificial persons, and there is no basis for concluding that "individual" has an identical meaning, particularly where "individual" is included in the definition of "person." In fact, in light of the above-quoted portion of the decision in Rogers v. Shanahan, supra, we are compelled to the conclusion that, since "individual" and "person" are used in the same statute (66-1,109), the legislature intended different meanings for these terms.

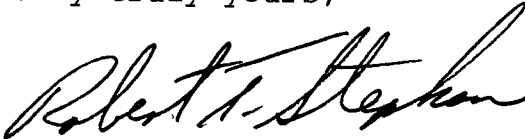
You indicate that you have been advised by staff attorneys of the state corporation commission that the commission has "traditionally" utilized an interpretation contrary to the one we have reached herein. The consideration to be given an administrative interpretation of a statute was capsulized in the Court's Syllabus to Bill George Chrysler-Plymouth v. Carlton, 216 Kan. 365 (1975):

"The interpretation placed upon a statute by an administrative body, whose duties are to carry the legislative policy into effect, should be given consideration and weight when the statute is ambiguous and the intent of the legislature is not clear. But the court need not follow an administrative interpretation placed upon the statute when the interpretation of the administrative body is erroneous." Id. at syl. ¶2.

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In our judgment, since the term "individual," as understood in its common and ordinary sense, is plain and unambiguous in its reference to a natural person, the conclusion of the state corporation commission's legal staff that such term includes artificial persons, as well, is erroneous and should be disregarded.

Very truly yours,



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W. Robert Alderson
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RTS:WRA:phf