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ATTORNEY GENERAL OPINION NO. 82-181

Mr. Jerry Smith
Chief of Police
Municipal Building
Junction City, Kansas 66441

Re: Contracts And Promises -- Pawnbrokers And Precious
Metal Dealers -- Licensure

Synopsis: K.S.A. 16-707 contemplates licensure of pawnbrokers and precious metal dealers as separate entities. Therefore, a licensed pawnbroker must also obtain a precious metal dealer's license prior to transacting business as a precious metal dealer. Jewelers who purchase precious metals, or used articles containing such metals, for resale purposes must be licensed as precious metal dealers. Coin dealers who purchase coins for their numismatic value, rather than their metal content, are not required to be licensed as precious metal dealers. Cited herein: K.S.A. 16-706, 16-707, 16-710, 16-712, 16-714, 16-715, 16-716, 16-719, 16-720.

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Dear Mr. Smith:

You have requested our opinion regarding the application of the licensing requirements of the Pawnbroker and Precious Metal Dealers Act (K.S.A. 16-706 et seq.) to various businesses. Specifically, you inquire whether a licensed pawnbroker must obtain a precious metal dealer's

license prior to purchasing or selling precious metals. Secondly, you ask whether jewelers are required to be licensed as precious metal dealers. Your final inquiry concerns the applicability of this Act to coin dealers.

In analyzing your inquiries, we begin with the fundamental rule of statutory construction which requires that we first determine the legislative intent underlying the statute. Kansas City v. Robb, 164 Kan. 577, 580 (1948). In giving effect to that intent, courts "must consider the language of the statute; its words are to be understood in their plain and ordinary sense." Lakeview Gardens, Inc. v. State, ex. rel. Schneider, 221 Kan. 211, 214 (1976).

K.S.A. 16-706 defines pawnbroker and precious metal dealer, for purposes of this Act, as follows:

"'Pawnbroker' means any person who loans money on deposit or pledge of personal property or other valuable thing, other than intangible personal property, or who deals in the purchase of personal property on the condition of selling the same back again at a stipulated price.

. . . .

"'Precious metal dealer' means any person who engages in the business of purchasing precious metal for the purpose of reselling such metal in any form."

As you will notice, there is no overlap between the types of activities used to define "pawnbroker" and "precious metal dealer." To the contrary, the definition of pawnbroker depicts a loan-type situation as contrasted with the purchase/resale activity describing the precious metal dealer's business. Certainly, these definitions indicate a legislative recognition of each of these businesses as separate entities.

The repeated use of the conjunction "or" throughout the Act further evidences the legislature's intent to address two distinct business enterprises. For example, K.S.A. 16-707 provides: "No person shall engage or continue in business as a pawnbroker or precious metal dealer without first obtaining a license therefor." (Emphasis added.) Similarly,

K.S.A. 16-710 states: "The document or other instrument evidencing the license of a pawnbroker or precious metal dealer shall state the address at which the business is to be conducted" (Emphasis added.)

Furthermore, the structure of the Act itself is indicative that the legislature contemplated separate licensing of the two businesses. The Act is structured in such a manner that the entirety of its provisions does not apply to both businesses. For example, K.S.A. 16-714, 16-716(a), 16-717(a) and 16-719 deal only with pawnbrokers; whereas, K.S.A. 16-715(d), 16-716(b), 16-717(b) and 16-720 are exclusively applicable to precious metal dealers. In our judgment, this further reflects legislative recognition of the differences between the two businesses.

Finally, a consideration of the problems associated with enforcing this Act buttresses our conclusion. In this connection, we note that K.S.A. 16-712 provides:

"Each licensee shall keep and use in the licensee's business such books, accounts and records as will enable the city or county issuing the licensee's license to determine whether such licensee is complying with the provisions of this act."

From a practical standpoint, construing the Act so as to require separate licenses assists in the Act's enforcement. Although the qualifications and application procedures are identical for licensing each of these businesses, separate licenses facilitate the identification of the activities to be engaged in by the various licensees and, as a consequence, the licensing authority is better able to assure compliance with the provisions of the Act applicable to each licensee.

More importantly, from a legal standpoint, we are mindful of the "cardinal rule of statutory construction that the legislature intended a statute be given a reasonable construction so as to avoid unreasonable and absurd consequences." Williams v. Board of Education, 198 Kan. 115, 125 (1967). "Furthermore, a statute should never be given a construction that leads to uncertainty, injustice or confusion, if possible to construe it otherwise." Whitehead v. State of Kansas Labor Department, 203 Kan. 159, 162 (1969). Here, if the Act is construed as requiring a single license to engage in business both as a pawnbroker and precious metal dealer, an infraction of the Act's requirements applicable to only one of the

businesses may result in suspension or revocation of the license. (See K.S.A. 16-713.) Thus, the licensee would no longer be permitted to engage in either of the businesses. In our judgment, this is an unjust and unreasonable consequence which can be avoided by construing the Act as requiring a separate license for each business.

Therefore, it is our opinion that, in enacting the Pawnbroker and Precious Metal Dealers Act, the legislature envisioned two distinct businesses, each requiring a separate license. Thus, a licensed pawnbroker is required to obtain a precious metal dealer's license before engaging in the business of purchasing precious metal for resale purposes.

Your second inquiry concerns whether jewelers and jewelry stores are required to be licensed as precious metal dealers. In addressing this issue, we must again turn to well established rules of statutory construction. The Kansas Supreme Court has held:

"The fundamental rule of statutory construction, to which all other rules are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes. When a statute is plain and unambiguous the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be." Johnson v. McArthur, 226 Kan. 128, 135 (1979).

As noted earlier, K.S.A. 16-706(d) defines a precious metal dealer as "any person who engages in the business of purchasing precious metal for the purpose of reselling such metal in any form," and K.S.A. 16-707 states: "No person shall engage or continue in business as a . . . precious metal dealer without first obtaining a license." Obviously, to determine the scope and extent of this requirement necessitates an understanding of the term "precious metal," which is defined in K.S.A. 16-706(c), as follows:

"'Precious metal' means gold, silver or platinum group metals or any used articles or other used personal property containing such metals, but shall not include coins purchased for their numismatic value rather than their metal content or ingots or other industrial residue or by-products composed of such metals purchased from manufacturing firms." (Emphasis added.)

Clearly, in defining "precious metal" the legislature has distinguished between the various unwrought or unfashioned metals (gold, silver and platinum group metals) and items containing such metals. And with respect to the latter, only "used articles or other used personal property containing such metals" have been included within the definition of "precious metal." Thus, consideration of the scope of this definition in conjunction with the definition of "precious metal dealer" compels the conclusion that not all jewelers or jewelry stores are necessarily subject to the Act's licensing requirements. For example, a business which purchases gold, silver or platinum metal for the purpose of manufacturing jewelry items for resale, or which acquires used jewelry for resale, either in its purchased form or some other form, must be regarded as a precious metal dealer. On the other hand, we do not believe that a business which does not engage in either of these activities, but which limits its jewelry operations to the sale of new items of jewelry which contain gold, silver or platinum can be regarded as a precious metal dealer. Although we do not presume to understand fully the nature of the jewelry business, we believe items of such jewelry purchased from a wholesaler or manufacturer may be regarded as new, insofar as the retailer of such items is concerned.

This conclusion is supported by a study of the evolution of the bill through amendments in the House and Senate. Early versions of the bill defined precious metals as follows: "'Precious metal' means gold, silver or platinum group metals or any articles containing such metals" (Emphasis added.) This language was amended by the Senate Committee to read: "'Precious metal' means gold, silver or platinum group metals or any used articles or other used personal property containing such metals" (Emphasis added.) The Senate version was subsequently adopted and constitutes the language of the statute currently in effect. The clear words of this amendment illustrate a legislative desire to restrict the definition of "precious metals" to certain metals and used articles containing such metals.

In discussing the Pawnbrokers and Precious Metal Dealers Act, the United States District Court for the district of Kansas recently stated: "It is apparent that, in amending the statutes regulating pawnbrokers, the Kansas Legislature sought to restrict the flow of stolen goods through legitimate businesses to untraceable buyers." Joe Flynn Rare Coins, Inc. v. Stephan, 526 F.Supp. 1275, 1279 (1981). Our interpretation of the statute is consistent with the federal district court's enunciation of the intent of the Act, as we would conclude that any jeweler purchasing any of these unwrought or unfashioned metals, or used articles containing the metals, must obtain a precious metal dealer's license. This type of

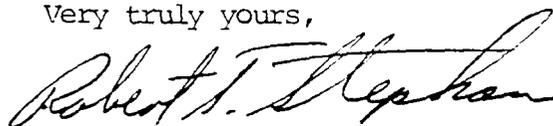
purchase presents a significant risk of traffic in stolen goods. Purchases of new articles containing such metals from wholesalers and manufacturers involve a substantially decreased risk of transfers of stolen property, and licensure of individuals engaged in this type of business would not further the purpose of the Act.

Obviously, therefore, it is inappropriate for us to generalize our conclusion as to the Act's application to jewelers and jewelry stores. Whether a particular jeweler or jewelry store satisfies the definitional requirements of a precious metal dealer is a question of fact which must be determined on a case by case basis.

In connection with your final inquiry concerning coin dealers, you will note that K.S.A. 16-706(c) specifically excludes "coins purchased for their numismatic value rather than their metal content" from the definition of "precious metal." This exclusion applies to coin dealers who purchase coins for reasons other than their metallic content. Therefore, it is our opinion that coin dealers are specifically excluded from this act and do not need a precious metal dealer's license, as long as their transactions are limited to coin purchases for numismatic value.

In conclusion, it is our opinion that a licensed pawnbroker who engages in the business of purchasing precious metal for resale purposes must also be licensed as a precious metal dealer. Furthermore, jewelers who purchase unwrought or unfashioned gold, silver or platinum group metals, or used articles or personal property containing these metals, for resale in any form must obtain a precious metal dealer's license. Finally, since coins purchased for their numismatic value are not considered precious metals under this Act, coin dealers purchasing coins purely for their numismatic value are not considered precious metal dealers and are not required to be licensed as such.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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