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ATTORNEY GENERAL OPINION NO. 83- 145

The Honorable Keith Farrar
State Representative
One Hundred Twenty-Fourth District
Star Route, Box 42A
Hugoton, Kansas 67951

Re: Automobiles and Other Vehicles -- Registration
of Vehicles -- Definitions

Synopsis: The definition of "truck tractor" in K.S.A. 8-126(e) cannot be construed so as to exclude a vehicle which is designed and used primarily for drawing other vehicles, even though it also is capable of carrying a load in addition to part of the weight of a drawn vehicle. Accordingly, the power unit in a combination of vehicles commonly known as a "dromedary rig" must be regarded as a truck tractor, since it is designed and used primarily for drawing other vehicles. Cited herein: K.S.A. 8-126.

* * *

Dear Representative Farrar:

You have asked for our opinion as to the application of certain provisions of the vehicle registration statutes to a combination of vehicles commonly referred to as a "dromedary rig." You note that the questions for which you seek answers were posed to the Division of Vehicles of the State Department of Revenue by Mr. Fred Carman, Assistant Revisor of Statutes, and that responses to these questions were provided by the Department's legal staff. However, you indicate that one of your constituents disagrees with the Department's opinion and that you concur in his disagreement.

Having reviewed Mr. Carman's letter and the Department of Revenue's responsive opinion, we think it unnecessary to set forth here the specific questions or the answers provided thereto by the Department. It is clear from our review that there is a single issue controlling the answer to each of the pertinent questions, and that is the nature of a "dromedary rig."

As we understand it, a dromedary rig is a combination of vehicles having a power unit that is designed and used primarily for drawing other vehicles, but which is capable of carrying a load itself. Since the registration statutes do not specifically address dromedary rigs or this type of power unit, the resolution of this matter depends on whether the power unit in question is a "truck" or "truck tractor." These latter terms are defined in K.S.A. 8-126 for purposes of the registration statutes, which distinguish between these vehicles with respect to the gross weight for which the vehicle may be registered and the amount of fee applicable thereto.

Subsection (c) of K.S.A. 8-126 defines "truck" as meaning a "motor vehicle which is used for the transportation or delivery of freight or merchandise or more than 10 passengers," and K.S.A. 8-126(e) defines "truck tractor" as meaning "[e]very motor vehicle designed and used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle or load so drawn."

The Department of Revenue concluded that the power unit in question is a truck tractor. This conclusion was predicated on an Attorney General's opinion dated February 14, 1973, which reversed a contrary opinion of July 30, 1971. With respect to these prior opinions, we note first that, until now, this office has not had occasion to consider this matter subsequent to the 1973 opinion. We also note that these prior opinions did not relate to the precise question presented for our consideration, but related instead to the question of whether a power unit of the type considered here was a truck tractor within the contemplation of certain sections of the Uniform Act Regulating Traffic on Highways. However, even though the prior opinions dealt with a different series of statutes, the pertinent definition of "truck tractor" applicable to these statutes at the time of the 1973 opinion was identical to the corresponding definition in K.S.A. 8-126. Hence, even though that prior opinion did not concern vehicle registration, we believe it to be relevant, because its ultimate effect was to construe a definition of "truck tractor" that is identical to the definition at issue here.

Having considered the definition of "truck tractor," we have concluded initially that the term is somewhat ambiguous.

Hence, it is necessary and appropriate to apply pertinent rules of statutory construction. Of principal significance are the rules expressed in the following statement by the Kansas Supreme Court in Brown v. Keill, 224 Kan. 195 (1978):

"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 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.) Id. at 199, 200.

In our opinion, the legislature's intent will not be ascertained solely from a consideration of the definition of "truck tractor" in K.S.A. 8-126(e). It must be derived from a consideration of the entirety of the registration statutes. "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." Clafin v. Walsh, 212 Kan. 1, 8 (1973). See, also, Callaway v. City of Overland Park, 211 Kan. 646, 650 (1973); Brown v. Keill, supra.

As we noted previously, by the definitions in K.S.A. 8-126 the legislature has attempted to distinguish between a "truck" and a "truck tractor," and the registration statutes utilize these distinctions in imposing the various registration fees. Thus, we believe it necessary and appropriate to view the definition of "truck tractor" from this perspective, i.e., to view it in a way which, in fact, promotes the intended distinction between trucks and truck tractors. Although a "truck" is defined in K.S.A. 8-126(c) as a "motor vehicle which is used for the transportation or delivery of freight and merchandise . . ." (emphasis added), we must take note that trucks do, in fact, tow other vehicles without losing their character as trucks. Hence, the definition in K.S.A. 8-126(c) circumscribes the "primary" use. Similarly, the first portion of K.S.A. 8-126(e) defines a "truck tractor" as a "motor vehicle designed and used primarily for drawing other vehicles." By its very terms, this part of the definition contemplates that there may be other, secondary uses, e.g., transporting freight and merchandise. Thus, the second part of the definition should be read so as to exclude those vehicles which are designed and used for transporting freight and merchandise to the extent that the vehicle is not primarily designed and used for drawing other vehicles.

In our judgment, as long as a motor vehicle is designed and used primarily for drawing other vehicles and carrying a part of the weight of the drawn vehicles, it is a truck tractor, even though it also may be used to carry freight and merchandise. Conversely, when a power unit of the type considered here is designed and used for transporting freight and merchandise, and is not designed and used primarily for drawing other vehicles, it does not qualify as a truck tractor. Likewise, even though a motor vehicle may be used for drawing other vehicles, unless it is designed and used primarily for that purpose, it is not a truck tractor.

By its very definition, as it has been provided us, a "dromedary rig" is a combination of vehicles having a power unit that is designed and used primarily for drawing other vehicles. Hence, it is our opinion that the power unit of a dromedary rig is a truck tractor within the meaning of K.S.A. 8-126(e). Thus, we would concur in the Department of Revenue's opinion.

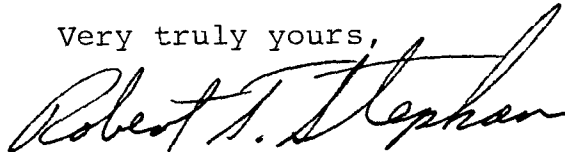
Before concluding, we should note that, as evidenced by the recent opinion of the Department of Revenue, our opinion is consistent with the long-standing interpretation of the pertinent statutes by that agency. That fact serves to buttress our opinion, since "an interpretation of state

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law by a state agency delegated the responsibility of enforcing that law is entitled to great weight." Lincoln American Corp. v. Victory Life Insurance Co., 375 F.Supp. 112, 118 (D. Kan. 1974). Similarly, "[t]he administrative interpretation of a statute is entitled to great weight in determining [the] meaning of [a] statute unless clearly wrong." Sharp v. U.S., 108 F.Supp. 745, Syl. ¶2 (D. Kan. 1952). Thus, in reaching our conclusion we accord substantial importance to the Department of Revenue's long-standing interpretation, since we cannot say, as a matter of law, that it is clearly erroneous. To the contrary, as indicated by the rationale of this opinion, we believe the agency's interpretation to be correct.

In summary, therefore, it is our opinion that the definition of "truck tractor" in K.S.A. 8-126(e) cannot be construed so as to exclude a vehicle which is designed and used primarily for drawing other vehicles, even though it also is capable of carrying a load in addition to part of the weight of a drawn vehicle. To do so would contravene the manifest purpose of the legislature to distinguish between trucks and truck tractors on the basis of their primary uses. Accordingly, the power unit in a combination of vehicles commonly known as a "dromedary rig" must be regarded as a truck tractor, since it is designed and used primarily for drawing other vehicles.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle