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ATTORNEY GENERAL OPINION NO. 83- 147

Colonel David Hornbaker
Superintendent
Kansas Highway Patrol
122 S.W. Seventh Street
Topeka, Kansas 66603

Re: Automobiles and Other Vehicles -- Act Regulating
Traffic; Equipment of Vehicles -- Motor Vehicle
Inspection

Synopsis: K.S.A. 8-1701, which makes the operation of a motor
vehicle lacking the proper equipment a misdemeanor,
refers only to that equipment which is required
by K.S.A. 8-1703 to 8-1749a.

K.S.A. 8-1753 does not authorize the Kansas High-
way Patrol to implement rules and regulations es-
tablishing the type of equipment to be inspected
by the motor vehicle inspection stations. The
Kansas Highway Patrol may implement regulations
governing only the method of inspection. Cited
herein: K.S.A. 8-1701, 8-1703, 8-1749a, 8-1750,
8-1752, 8-1753.

* * *

Dear Colonel Hornbaker:

You have requested our opinion concerning certain aspects of
the Uniform Act Regulating Traffic on Highways. K.S.A. 8-1701
et seq. Specifically you inquire as to the effect of a re-
cent Kansas Supreme Court ruling regarding K.S.A. 8-1701 and
the authority of the Kansas Highway Patrol to establish rules
and regulations concerning motor vehicle equipment.

K.S.A. 8-1701, originally enacted in 1974, was recently the
subject of litigation in the Kansas courts. This statute
states:

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"It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles, which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this article, or for any person to do any act forbidden or fail to perform any act required under this article." (Emphasis added.)

In State v. Carpenter, 231 Kan 235 (1982), the Kansas Supreme Court held that the phrase "which is in such unsafe condition as to endanger any person" was vague and therefore unenforceable. However, the Court spared the remainder of the statute, stating:

"[t]he removal of that portion [of the statute] would not appear to affect, impair, or invalidate the remainder thereof. The valid portion of the statute remaining can then be read and applied as follows:

"'8-1701. Scope and effect of sections in article 17; unlawful acts. (a) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles . . . which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this article, or which is equipped in any manner in violation of this article, or for any person to do any act forbidden or fail to perform any act required under this article.'

. . . .

"We, therefore, hold that, although the particular portion of K.S.A. 8-1701 discussed above is unconstitutionally vague, the balance of the statute, after deleting that portion, is constitutional and enforceable." Carpenter supra, pp. 240 and 241.

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The basis of your concern is whether the Highway Patrol has any discretion in ticketing violators operating unsafe vehicles if such "unsafe conditions" do not fall within the statutory provisions contained in Article 17. In Carpenter, the Court observed:

"The remaining portions of K.S.A. 8-1701(a) declare, in substance, that it is a misdemeanor for any person to drive a motor vehicle 'which does not contain those parts or is not at all times equipped in proper adjustment as required in this article [art. 17] or which is equipped in any manner in violation of this article, or for any person to do any act forbidden or fail to perform any act required under this article.'

"In order to consider the issue in proper perspective, it is important to note the other sections of K.S.A., article 17, chapter 8.

. . . .

"Article 17 covers the equipment required on motor vehicles and sets forth with great specificity the requirements for lamps, lighting equipment, brakes, and other miscellaneous equipment such as horns, warning devices, mufflers, mirrors, windshields, windows, tire equipment, safety glazing materials, flares or warning devices, air-conditioning equipment, television receivers, and safety belts and shoulder harnesses." (Emphasis added.) 231 Kan. at 236 and 237.

The Court concluded:

"It is obvious, from an analysis of article 17 of chapter 8 as a whole, that K.S.A. 8-1701 is the general section which makes it a misdemeanor for a motor vehicle to be driven on any highway which does not meet the requirements of those sections of article 17 pertaining to the equipment of motor vehicles." 231 Kan. at 241.

Since the portion of the statute dealing with "unsafe conditions" has been declared unconstitutional, the remainder of the statute refers only to those conditions or equipment specifically identified by statute in K.S.A. 8-1703 to 8-1749a. Consequently, while a motor vehicle may have certain items

of equipment that may be either missing or in need of repair or may make the operation of the motor vehicle unsafe, we must conclude that the highway patrol has no authority, pursuant to K.S.A. 8-1701, to issue citations to those operators of such vehicles, unless such unsatisfactory equipment or systems are specifically enumerated in Article 17. Therefore, K.S.A. 8-1701, which makes the operation of a motor vehicle lacking the proper equipment a misdemeanor, refers only to that equipment which is required by K.S.A. 8-1703 to 8-1749a.

Your second inquiry concerns the authority of the Highway Patrol to implement rules and regulations concerning any additional equipment to be required for inspection purposes pursuant to K.S.A. 8-1750 et seq.

K.S.A. 8-1752(d) gives authority to the superintendent to:

"[A]dopt such rules and regulations as may be necessary for the efficient operation and maintenance of inspection stations, including the manner and procedure for inspecting the components and equipment of motor vehicles required to be inspected by K.S.A. 8-1753"
(Emphasis added.)

Furthermore, K.S.A. 8-1753(a) states in pertinent part:

"In making an inspection of a motor vehicle, the inspection station shall inspect the braking, suspension and steering and tire conditions and shall inspect all equipment required by state statute or rules and regulations to be on such vehicle to determine that it is present and in good condition and proper adjustment in the manner prescribed by rules and regulations of the superintendent."
(Emphasis added.)

In Woods v. Midwest Conveyor Co., 231 Kan. 763, 770 (1982), the Kansas Supreme Court recently discussed the powers of administrative agencies, as follows:

"Administrative agencies are creatures of statute and their power is dependent upon the authorizing statutes, so that we must find within the statute warrant for the exercise of any authority which they claim. They have no general or common law powers. They have only such powers as have been conferred upon them by law, expressly or by clear implication." See also State, ex rel., v. Columbia

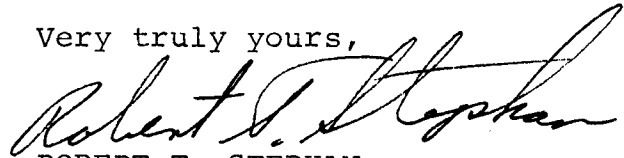
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Pictures Corporation, 197 Kan. 448 (1966), and
1 Am.Jur.2d Administrative Law §131, pp. 941
and 942 (1962).

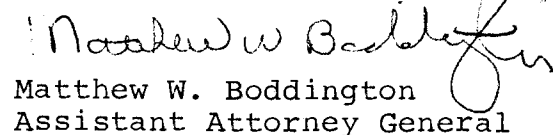
Although the underscored language of K.S.A. 8-1752(d) and K.S.A. 8-1753 mandate that the Kansas Highway Patrol inspect equipment required for motor vehicles, the authority of the Patrol to adopt rules and regulations is limited to "operation and maintenance of inspection stations", the manner and procedure for "inspecting" vehicle equipment and the "manner" for determining the "condition" and "adjustment" of motor vehicle equipment. We find no specific authority for the Highway Patrol to require certain motor vehicle equipment to be used on automobiles.

Therefore, K.S.A. 8-1753 does not authorize the Kansas Highway Patrol to implement rules and regulations establishing the type of equipment to be inspected by the motor vehicle inspection stations. The Kansas Highway Patrol may implement regulations governing only the method of inspection.

Very truly yours,



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RTS:BJS:MWB:hle