STATE OF KANSAS

OFFICE OF THE ATTORNEY

2ND FLOOR, KANSAS JUDICIAL CENTER

OP 84-92 Corrected; see OP. 92A

ROBERT T. STEPHAN
ATTORNEY GENERAL

September 6, 19

ATTORNEY GENERAL OPINION NO. 84- 92

David H. Heilman
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200 West Main Street
Council Grove, Kansas 66846

Re: Automobiles and Other Vehicles--Act Regulating Traffic; Equipment of Vehicles--One-Way Glass or Glazing of Windows Prohibited

Synopsis: The provisions of K.S.A. 8-1749a (amended by Laws 1984, chapter 39, section 20, effective January 1, 1985) which make it a crime to equip a motor vehicle with any material which "prohibits . . . the ability to see into the vehicle from the outside,"are clear and unambiguous. However, that portion of K.S.A. 8-1749a which makes it a crime to equip a motor vehicle with any material which "substantially impairs the ability to see into the vehicle from the outside," is vague and indefinite. Consequently, these latter provisions of the statute violate the Due Process Clause of the Fourteeneth Amendment to the United States Constitution. A court probably would excise these provisions from the statute and uphold the remaining provisions thereof. Cited herein: K.S.A. 8-1749a (amended by Laws 1984, chapter 39, section 20, effective January 1, 1985); U.S. Const., 14th Amend.

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Dear Mr. Heilman:

You seek an interpretation of the provisions of K.S.A. 8-1749a, as amended by Laws 1984, chapter 39, section 20, effective

January 1, 1985. In particular, you question certain language found in subsection (a) of the statute. This subsection, both currently and in its amended form, prescribes:

> "[N]o motor vehicle required to be registered in this state and which is operated on the highways of this state shall be equipped with one-way glass or any adhesive film or other glaze or application on or in the front windshield, side wings or side windows on either side forward of or adjacent to the operator's seat, which prohibits or substantially impairs the ability to see into such motor vehicle from the outside, nor shall any new motor vehicle which is sold in this state be so equipped." (Emphasis added.)

This statute was amended by the 1984 Legislature, effective January 1, 1985, to prescribe that a violation of its provisions is a "traffic infraction" and, under section 1(d) of Laws 1984, chapter 39, an "ordinance traffic infraction" in those cities which have adopted ordinances prohibiting the same acts as proscribed in section 1 of Laws 1984, chapter 39. (See Laws 1984, chapter 39, sections 1 and 32.) Under the new law, violation of the provisions of the statute will render a violator subject to a fine. Currently, a violation of the statute is a misdemeanor. In either form, the statute is clearly criminal in nature. The portion of the statute about which you inquire provides, in essence, that no motor vehicle shall be equipped with one-way glass or any covering, coating or material on the windows thereof which "substantially impairs the ability to see into such motor vehicle from the outside." However, the question of whether a covering, coating or material on the windows of a motor vehicle "substantially impairs" the ability to see into the vehicle is a subjective matter. In our judgment, reasonable persons could disagree on whether the ability to see into a motor vehicle has been substantially or insubstantially impaired by a material placed on the windows thereof.

In State v. Carpenter, 231 Kan. 235 (1982), the Kansas Supreme Court reiterated the well-settled rule that: "A statute which . . . forbids the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application is violative of due process of law." Id. at Syl ¶1.

In Carpenter, the court held that that portion of K.S.A. 8-1701 which made it a crime to operate a motor vehicle "in such [an] unsafe condition as to endanger any person," was void for vagueness under the Due Process Clause of the Fourteenth Amendment. In reaching its decisions, the court stated:

"The test to determine whether a criminal statute is unconstitutional by reason of being vague and indefinite is whether its language conveys a sufficiently definite warning as to the conduct proscribed when measured by common understanding and practice. . . . At its heart, the test for vagueness is a commonsense determination of fundamental fairness. These general principles have been recognized in other Kansas cases. See for example State v. Kirby, 222 Kan. 1, 563 P.2d 408 (1977); Kansas City Millwright Co., Inc. v. Kalb, 221 Kan. 658, 562 P.2d 65 (1977); State v. Hill, 189 Kan. 403, 369 P.2d 365 (1962).

"In Kirby, it was held that the phrase 'endangering of life' is vague and ambiguous, since there is no universally accepted definition of the term 'endangering of life' which exists within the common knowledge of the population of this state. It was further held that K.S.A. 1976 Supp. 21-3431 was not sufficiently definite in its description of the acts or conduct forbidden, when measured by common understanding and practice, as to satisfy the constitutional requirements of due process of law. More recently in State v. Meinert, 225 Kan. 816, the test discussed above was applied and it was held that K.S.A. 21-3608(1)(a), which charged the offense of endangering a child, was unconstitutionally vague.

"In the recent case of City of Altamont v. Finkle, 224 Kan. 221, 579 P.2d 712 (1978), a city traffic ordinance which charged the defendant with an 'unlawful exhibition of speed or acceleration' was held unconstitutionally vague on the basis that the ordinance was so vague and indefinite that a person charged in such terms could not be expected to understand the nature and elements of the alleged violation. In the opinion, the court pointed out that nowhere in the ordinance was any attempt made to define the term 'exhibition of speed or acceleration' or to delineate the proscribed conduct." 231 Kan. at 237-238.

Like the phrases discussed by the court in Carpenter, the phrase "substantially impairs" does not have a universally accepted definition. This fact is made clear by your request for an interpretation of this phrase by our office. Moreover, nowhere in the statutes regulating traffic is there any attempt made to define the phrase "substantially impairs." Thus, it is our opinion that this language of K.S.A. 8-1749a could not survive a challenge under the Due Process Clause of the Fourteenth Amendment, in that persons of common intelligence legitimately could differ as to what constitutes a substantial impairment of the ability to see into a motor vehicle. Thus, under the test for vagueness applied in Carpenter and the other Kansas cases discussed therein, it is probable the phrase "substantially impairs" in K.S.A. 8-1749a is invalid. However, as the court did in Carpenter, we think it probable a court would excise this phrase from the statute and uphold the remaining provisions thereof.

Thus, in response to your inquiry, please be advised there exists no definition of the phrase "substantially impairs" as said phrase is used in K.S.A. 8-1749a. Consequently, we are of the opinion this portion of the statute could not survive a constitutional challenge under the Due Process Clause of the Fourteenth Amendment, as the phrase is too vague and indefinite to pass constitutional muster as a criminal statute.

Very truly yours,

Robert T. Stephan

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RTS:JSS:RJB:jm