ATTORNEY GENERAL OPINION NO. 84-92A

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

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

Synopsis: In State v. Rose, 234 Kan. 1044 (1984), the Kansas Supreme Court ruled that K.S.A. 8-1749a (amended by L. 1984, ch. 39, §20, effective January 1, 1985), is not unconstitutionally vague and indefinite under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The court said the term "substantially" means less than totally or the whole, but more than imaginary. The term defines a standard between the extremes of total and complete impairment and slight impairment.

Since the conclusion reached in Attorney General Opinion No. 84-92 is contrary to the decision of the court in State v. Rose, supra, the opinion is withdrawn. Cited herein: K.S.A. 8-1749a, (amended by L. 1984, ch. 39, §20, effective January 1, 1985); U.S. Const., 14th Amendment.

Dear Mr. Heilman:

A few weeks ago you sought our opinion on the meaning of that portion of K.S.A. 8-1749a (amended by L. 1984, ch. 39, §20,
effective January 1, 1985) which makes it a crime to equip any
motor vehicle required to be registered in this state and operated
on the state's highways:

"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 sub-
stantially impairs the ability to see into
such motor vehicle from the outside . . . ."
(Emphasis added.)

We responded to your inquiry by issuing Attorney General Opinion
No. 84-92, in which we concluded the above-emphasized language
of 8-1749a was unconstitutionally vague and indefinite under
the Due Process Clause of the Fourteenth Amendment to the United
States Constitution. Our conclusion was based upon the Kansas
Supreme Court's decision in State v. Carpenter, 231 Kan. 235
(1982) and the numerous other criminal cases cited in that decision.
We also expressed the opinion that the other provisions of the
statute were clear and unambiguous and would be upheld, if the
constitutionality of the statute was challenged.

This week our attention has been called to the recent decision
of the Kansas Supreme Court in State v. Rose, 234 Kan. 1044 (1984),
in which the court held the "substantially impairs" language of
K.S.A. 8-1749a was not unconstitutionally vague and indefinite.
The court recited the rule that a statute which either requires
or 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. Id. at Syl. ¶1.
However, the court held: "'Substantially' is a word of general
usage, commonly known and understood by the public, which
provides a reasonably definite objective standard by which one
reading the statute can understand and contemplate what conduct
it is that the act proscribes." Id. at 1049. In addition, the
court said: "By definition the term is relative and must be
considered within the context of the particular fact situation;
in essence it means less than totally or the whole, but more
than imaginary." Id. at 1049. Finally, the court stated that
the term "substantially" "defines a standard between the extreme
of total and complete impairment and slight impairment . . . ."
Id. at 1050.
Since the opinion expressed in Attorney General Opinion No. 84-92 is contrary to the decision of the supreme court in State v. Rose, supra, Attorney General Opinion No. 84-92 is withdrawn.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Rodney J. Bieker
Assistant Attorney General

RTS:JSS:RJB:jm