



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

June 10, 1985

ATTORNEY GENERAL OPINION NO. 85- 63

The Honorable Bob Vancrum
State Representative, 29th District
9004 West 104th Street
Overland Park, Kansas 66212

Re: Automobiles and Other Vehicles -- General Provisions --
Registration of Vehicles; All-Terrain Vehicles;
Operation

Synopsis: K.S.A. 1984 Supp. 8-128(a) provides limits upon the locations in which an all-terrain vehicle [as defined by K.S.A. 1984 Supp. 8-126(bb)] may be operated. The statute contains a total prohibition on the operation of such vehicles on interstate, federal or state highways, and on other public highways, streets or roads at certain times without proper lighting. While the subsection also states that no such vehicle shall be operated within the limits of any first class city, this language should not be read as constituting a prohibition on the use of such vehicles on private property, given the general limitation of statutes in Chapter 8 to operation of vehicles on public roads and highways. However, if a city of the first class wished to enact an ordinance which is more restrictive of the use of all-terrain vehicles within the city limits, it would have the authority to do so under the home rule provisions of Article 12, Section 5 of the Kansas Constitution. Cited herein: K.S.A. 1984 Supp. 8-126, as amended by 1985 House Bill No. 2222; K.S.A. 8-127, as amended by 1985 Senate Bill No.

318; K.S.A. 1984 Supp. 8-128; K.S.A. 8-1102; Kan. Const., Art. 12, §5.

*

*

*

Dear Representative Vancrum:

As State Representative for the Twenty-ninth legislative district, you request our opinion on a question which concerns the effect of K.S.A. 1984 Supp. 8-128 as it relates to all-terrain vehicles. Specifically, you inquire if language contained in the statute prohibits the operation of such vehicles within the limits of any city of the first class, regardless of whether such operation is on the public highways and roads or on private property. You indicate that the City of Kansas City, Kansas has adopted a municipal ordinance which has the same wording as does the statute as concerning to first-class cities, which the city is interpreting as being a ban on the operation of all-terrain vehicles on both private and public property.

As you note in your letter, the 1984 Kansas Legislature added language to K.S.A. 8-126 and 8-128 to include provisions for all-terrain vehicles. The former statute was amended to include a definition of such vehicles to include:

"(bb) 'All-terrain vehicle.' Any motorized off-highway vehicle 45 inches or less in width, having a dry weight of 500 pounds or less, traveling on three or more low-pressure tires, and having a seat designed to be straddled by the operator. As used in this subsection, low pressure tire means any pneumatic tire six inches or more in width, designed for use on wheels with rim diameter of 12 inches or less, and utilizing an operating pressure of 10 pounds per square inch or less as recommended by the vehicle manufacturer."

K.S.A. 1984 Supp. 8-128 concerns registration of certain vehicles, and now reads [at subsection (a)]:

"(a) Farm tractors, all self-propelled farm implements including all-terrain vehicles when used for agricultural purposes, fertilizers and spreaders designed and used exclusively for dispensing liquid or dust fertilizer, road

rollers and road machinery temporarily operated or moved upon the highways, municipally owned fire trucks, privately owned fire trucks subject to a mutual aid agreement with a municipality and school buses owned and operated by a school district or a nonpublic school plainly painted thereon need not be registered under this act. A truck mounted fertilizer spreader used or manufactured principally to spread animal dung is not a self-propelled farm implement for the purpose of the act of which this section is a part. Notwithstanding the other provisions of this subsection (a), no all-terrain vehicle shall be operated on any interstate highway, federal highway or state highway for agricultural purposes or any other purpose. No all-terrain vehicle may be operated within the limits of any first class city. No all-terrain vehicle shall be operated on any public highway, street or road between the hours of 1/2 hour after sunset until 1/2 hour before sunrise, unless equipped with lights as is required by law for motorcycles." (Emphasis added.)

An examination of the legislative history of the act in which the two amendments appear (L. 1984, ch. 27), is not helpful in fixing any specific legislative intent behind the above-underscored language. However, several basic tenets of statutory construction may be applied to determine the legislature's purpose. First, the act must be read in pari materia with other acts which deal with the registration and operation of motor vehicles, and, if possible, harmonized so that all may be given force and effect. Capital Services, Inc. v. Dahlinger Pontiac-Cadillac, Inc., 232 Kan. 419 (1983). Further, in determining legislative intent, it is proper to consider the purpose to be accomplished and the effect of various constructions. Jackson v. City of Kansas City, 235 Kan. 278 (1984). Finally, if a statute is susceptible of more than one construction, effect should be given to that reading which gives effect to the intent and purpose of the legislature, even if such a construction may not be within the strict literal wording of the statute. Brown v. Keill, 224 Kan. 195 (1978).

Given the above principles, it is our opinion that the legislature did not have the intent to prohibit the operation of all-terrain vehicles upon private roads or private property, even

when such roads or property are located within the limits of a first class city such as Kansas City. Each of the other prohibitions in the statute concerning use of all-terrain vehicles relates to their operation on public roads and highways, with the statute as a whole exempting certain vehicles from the registration requirement of K.S.A. 8-127, as amended, which itself concerns operation of vehicles or "highways" of this state.


Further, in K.S.A. 1984 Supp. 8-126, as amended, numerous terms are defined in such a way as to exclude private property from the scope of the registration statutes. For example, subsection (a) defines "vehicle" as devices in which persons may be transported on "public highways," while subsection (s) defines "highways" to exclude roads on private property. While the legislature can, if it chooses, expressly extend the scope of traffic laws to include private property [see K.S.A. 8-1102(b) relating to abandonment of vehicles], such cases are the exception rather than the rule. Therefore, it is consistent with the overall intent of chapter 8 of the statutes to construe K.S.A. 1984 Supp. 8-128(a) to prohibit the operation of all-terrain vehicles upon the public roads and highways of any first class city, but not as a total ban on their operation anywhere within such cities.

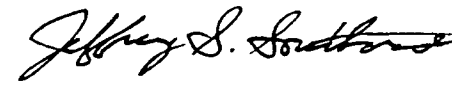
This is not to say, however, that a first class city could not, if it desired, act to further restrict the operation of such vehicles, or to even ban them entirely within the city. Kansas City, like all cities in this state, is given authority over its local affairs through the home rule provisions of the Kansas Constitution (Article 12, Section 5), and could therefore enact a more restrictive provision than that found in the statute. In that the subsection is not uniformly applicable to all cities, Kansas City could alternatively adopt a more liberal ordinance under the holdings of City of Junction City v. Griffin, 227 Kan. 333 (1980). This determination, of course, is one which must be left to the city council.

In conclusion, K.S.A. 1984 Supp. 8-128(a) provides limits upon the locations in which an all-terrain vehicle [as defined by K.S.A. 1984 Supp. 8-126(bb), as amended] may be operated. The statute contains a total prohibition on the operation of such vehicles on interstate, federal or state highways, and on other public highways, streets or roads at certain times without proper lighting. While the subsection also states that no such vehicle shall be operated within the limits of any first class city, this language should not be read as constituting a prohibition on the use of such vehicles on private property, given the general

limitation of statutes in Chapter 8 to operation of vehicles on public roads and highways. However, if a city of the first class wished to enact an ordinance which is more restrictive of the use of all-terrain vehicles within the city limits, it would have the authority to do so under the home rule provisions of Article 12, Section 5 of the Kansas Constitution.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw