



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

November 24, 1986

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

ATTORNEY GENERAL OPINION NO. 86- 164

Thomas Kelly  
Director, Kansas Bureau of  
Investigation  
1620 S.W. Tyler  
Topeka, Kansas 66612

Re: Automobiles and Other Vehicles--General  
Provisions--Regulatory Provisions; Vehicle  
Identification Number; Check of Assembled Vehicles  
by Highway Patrol; Vehicle Seizure and Disposition

Synopsis: K.S.A. 1985 Supp. 8-116a provides for the assignment of a new VIN to vehicles that have been assembled or restored, or upon which the proper identification number is in doubt. The vehicle is checked for stolen parts; if none are found, a new VIN is assigned and the vehicle returned to its owner in accordance with the procedure outlined. If there is evidence of fraud, the vehicle must be seized and disposed of as mandated by K.S.A. 1985 Supp. 8-116 and K.S.A. 22-2512. However, the forfeiture provisions of K.S.A. 1985 Supp. 8-116 and K.S.A. 22-2512 do not authorize an ex parte destruction or sale of private property without some compliance with due process requirements of notice and an opportunity to be heard. For this reason, the disposition of vehicles under K.S.A. 1985 Supp. 8-116 must be determined in an in rem proceeding filed by the state. Cited herein: K.S.A. 1985 Supp. 8-116; 8-116a; K.S.A. 22-2512; 74-2135.

\*

\*

\*

Dear Mr. Kelly:

As Director of the Kansas Bureau of Investigation, you request our opinion regarding the disposition of a vehicle seized pursuant to K.S.A. 1985 Supp. 8-116. Specifically, you inquire as to the proper method and procedure to be followed in disposing of a vehicle where K.S.A. 1985 Supp. 8-116 and K.S.A. 1985 Supp. 8-116a provide different means of disposition of vehicles without a vehicle identification number.

In your request letter you set forth the following fact situation: The vehicle in question had been damaged in shipment and the manufacturer removed the vehicle identification number (VIN) and sent the truck to a local dealer; the local dealer repaired the truck and donated the truck to the Kansas University Athletic Department. An employee of the Athletic Department discovered there was no VIN when he began the process of registering the vehicle; the lack of a VIN was then brought to the attention of a law enforcement officer who considers the vehicle contraband and believes it should be destroyed.

The statute in question, K.S.A. 1985 Supp. 8-116, states:

"(a) It is unlawful to sell, barter or exchange any motor vehicle, trailer or semitrailer, or to own or have the custody or possession of a motor vehicle, trailer or semitrailer, the original vehicle identification number of which has been destroyed, removed, altered or defaced, except as contemplated by K.S.A. 1984 Supp. 8-116a when no part of the motor vehicle, trailer or semitrailer has been stolen and a vehicle identification number has been assigned to the motor vehicle according to law. Violation of this subsection (a) is a class C misdemeanor."  
(Emphasis added.)

In 1984 the legislature amended K.S.A. 8-116 by adding the underscored exception. An examination of the legislative history of the act in which the amendment appears (L. 1984, ch. 25), 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 intend to require both the absence of stolen parts and the presence of a vehicle identification number in order that the exception apply. Doing so would lead to an absurd result since the statute to which the exception refers provides for the assignment of a vehicle identification number in this circumstance. A statute should never be given a construction that leads to an absurd result. State v. Roudybush, 235 Kan. 834 (1984).

To reiterate the facts, you state that the VIN was removed by the manufacturer and that the vehicle was repaired by a local dealer. The common definition of repair is "to restore to sound condition after damage or injury." The American Heritage Dictionary, New College Edition 1102 (1976). K.S.A. 1985 Supp. 8-116a provides in part:

"When an application is made for a vehicle which has been assembled, reconstructed, reconstituted or restored from one or more vehicles, or the proper identification number of a vehicle is in doubt, the procedure in this section shall be followed. . . ." (Emphasis added.)

Accordingly, based on the facts you presented, the proper method and procedure for disposing of the vehicle in question is spelled out in K.S.A. 1985 Supp. 8-116a:

"The owner of the vehicle shall request the Kansas highway patrol to check the vehicle. At the time of such check the owner shall supply the highway patrol with

information concerning the history of the various parts of the vehicle. Such information shall be supplied by affidavit of the owner, if so requested by the highway patrol. If the highway patrol is satisfied that the vehicle contains no stolen parts, it shall assign an existing or new identification number to the vehicle and direct the places and manner in which the identification number is to be located and affixed or implanted."

The particular circumstances and facts as presented come within the purview of K.S.A. 1985 Supp. 8-116a. This is not to say, however, that this is the only statute that may need to be addressed in the resolution of this problem. Regulations concerning check of vehicle identification numbers under K.S.A. 1985 Supp. 8-116a are authorized by K.S.A. 74-2135 which states:

"Concerning motor vehicles upon which such checks are made, such rules and regulations may provide for tests and procedures to detect evidence of possible fraud or other improper conduct relating to certificates of title, odometers, other violations of K.S.A. 8-611 and amendments thereto and vehicle identification numbers." (Emphasis added.)

In accordance with the statute cited above, if there is detected evidence of possible fraud relating to vehicle identification numbers then K.S.A. 1985 Supp. 8-116 applies because the vehicle no longer comes under the exception. The seized vehicle should then be disposed under section (c) of K.S.A. 1985 Supp. 8-116. It states:

"(c) Every law enforcement officer in this state having knowledge of a motor vehicle, trailer or semitrailer the vehicle identification number of which has been destroyed, removed, altered or defaced shall seize and take possession of such motor vehicle, trailer or semitrailer, arrest the owner or custodian thereof and cause prosecution to be brought in a court of competent jurisdiction. The

provisions of K.S.A. 22-2512 and amendments thereto shall apply to any motor vehicle, trailer or semitrailer seized under this section." (Emphasis added.)

The provisions of K.S.A. 22-2512 apply to the property seized pursuant to K.S.A. 1985 Supp. 8-116 and, in pertinent part, that statute provides as follows:

". . . When property seized is no longer required as evidence, it shall be disposed of as follows: . . . (4) Articles of contraband shall be destroyed, except that any such articles which may be capable of innocent use may in the discretion of the court be sold and the proceeds . . . [paid to the state treasurer]. (6) Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct."  
(Emphasis added.)

K.S.A. 22-2512(4), relating to the disposition of articles of contraband, provides for destruction, except that any such article which may be capable of innocent use may in the discretion of the court be sold and the proceeds paid to the state treasurer. If evidence of fraud is uncovered and disposition of the vehicle in question is to be governed by K.S.A. 1985 Supp. 8-116 rather than 8-116a, it may be that the vehicle has some innocent use as evidenced by its use by the Kansas University Athletic Department.

However, the forfeiture provisions of K.S.A. 22-2512(4) do not authorize an ex parte destruction or sale of private property without some compliance with due process requirements of notice and an opportunity to be heard. See Kansas v. Durst, 235 Kan. 62 (1984). Durst involved an appeal by the State of Kansas from an order in a criminal action directing the return of certain property seized at the time of the arrest of the defendant, to its purported owner. The state sought a mandatory application of K.S.A. 22-2512(4) as a simple post judgment order in a criminal case without any notice to or opportunity to be heard by those who might have an interest in the property to be destroyed. The Court concluded that it would be a violation of the right to due

process of law to apply the forfeiture provisions of K.S.A. 22-2512(4) in the manner requested by the state. The Court found that the state was therefore required to proceed in some manner against the property itself in order to afford due process to those who might have an interest in the property. Accordingly, the proper method and procedure for disposing of a seized vehicle pursuant to K.S.A. 1985 Supp. 8-116 is to have the state file an in rem proceeding against the property itself.

In conclusion, it is our opinion that under the facts presented the applicable statute for the disposition of the vehicle in question is K.S.A. 1985 Supp. 8-116a. Because this vehicle has been restored, it should be checked for stolen parts pursuant to K.S.A. 1985 Supp. 8-116a. If there is no evidence of fraud, a new VIN should be assigned and the vehicle returned to its owner in accordance with the procedure outlined in the statute. If, however there is evidence of fraud, the applicable statute is K.S.A. 1985 Supp. 8-116 and the disposition of the vehicle should be determined by the court in an in rem proceeding filed by the state.

Very truly yours,

ROBERT T. STEPHAN  
Attorney General of Kansas

Guen V. Easley  
Special Assistant Attorney General

RTS:JLM:GVE:jm