



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 29

Daniel L. Love
Ford County Attorney
P. O. Box 1057
Dodge City, KS 67801

Re: Public Health--Controlled Substances--Forfeiture of
Conveyance

Synopsis: The definition of the term "dealer," as found in
K.S.A. 1987 Supp. 79-5201 (taxation of marijuana
and controlled substances), does not create a
presumption that one in possession of more than 28
grams of marijuana in a conveyance is "using or
intends to use" that conveyance "to transport or
facilitate the transportation for the purpose of
sale or receipt", of that marijuana as it applies to
forfeiture of conveyances pursuant to the Uniform
Controlled Substances Act. Cited herein: K.S.A.
1987 Supp. 65-4135; 79-5201.

* * *

Dear Mr. Love:

As Ford County Attorney, you request our opinion as to the
effect that K.S.A. 1987 Supp. 79-5201, regarding taxation of
marijuana and controlled substances, may have on forfeiture of
conveyances pursuant to K.S.A. 1987 Supp. 65-4135(a)(4),
which is part of the uniform controlled substances act. The
tax act defines "dealer" as:

"any person who, in violation of Kansas law, manufactures, produces, ships, transports or imports into Kansas or in any manner acquires or possesses more than 28 grams of marijuana, or more than one gram of any controlled substance, or 10 or more dosage units of any controlled substance which is not sold by weight." K.S.A. 1987 Supp. 79-5201(c).

K.S.A. 1987 Supp. 65-4135(a)(4) states in pertinent part:

"(a) The following are subject to forfeiture:

. . . .

"(4) all conveyances, including aircraft, vehicles or vessels, which are used or intended for use to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described"

You inquire whether a person who possesses 40 grams of marijuana and thus meets the definition of "dealer" pursuant to tax stamp statute K.S.A. 1987 Supp. 79-5201 is also subject to vehicle forfeiture pursuant to K.S.A. 1987 Supp. 65-4135 when no independent evidence or circumstances exist giving reason to believe that he used or intended to use the conveyance to transport or facilitate the transportation for the purpose of sale or receipt of the marijuana. In other words, if a person has more than 28 grams of marijuana and is therefore considered to be a "dealer" for purposes of the tax stamp statute, can that same person therefore be presumed to be buying and selling marijuana for purposes of the forfeiture statute?

The Supreme Court of Kansas in the recent case of Director of Taxation, Dept. of Revenue v. Kansas Krude Oil Reclaiming Co., 236 Kan. 450, 455 (1984) reviewed the rules of construction of tax statutes:

"Tax statutes will not be extended by implication beyond the clear import of language employed therein, and their operation will not be enlarged so as to include matters not specifically

embraced. The rule of strict construction means that ordinary words are to be given their ordinary meaning. Such a statute should not be so read as to add that which is not readily found therein or to read out what as a matter of ordinary English language is in it. State v. Luginbill, 223 Kan. 15, 574 P.2d 140 (1977) relying upon State v. Bishop, 215 Kan. 481, 483, 524 P.2d 194 Kan. 297, 300, 398 P.2d 1011 (1965)."

The Supreme Court of Kansas addressed the rules of construction of statutes imposing forfeiture in Christiansen v. Virginia Drilling Co., 170 Kan. 355, 360 (1951):

"A statute imposing a forfeiture should be construed strictly and in a manner as favorable to the person whose property is to be seized as is consistent with fair principles of interpretation. Courts will not search for a construction to bring about a forfeiture, nor will a constrained construction be indulged in order to create a forfeiture. For a statute to be construed so as to work a forfeiture, its language must clearly show such an intent, and forfeiture is never to be inferred from doubtful language. Courts will not force upon a forfeiture statute a construction which amounts to a reading into the law provisions not inserted therein by the legislature. (37 C.J.S. 8 to 10; 23 Am. Jur. 601-602.)"

In our opinion these two statutes are separate and distinct. Even critical definitions in these statutes are different. In the tax statute K.S.A. 1987 Supp. 79-5201, marijuana is excluded from the definition of controlled substance. However, in K.S.A. 1987 Supp. 65-4135, which is part of the uniform controlled substances act, marijuana is included in the definition of controlled substances.

Applying the statutory construction principles discussed above, we believe that in order for a forfeiture of a conveyance to occur the provisions of K.S.A. 1987 Supp.

65-4135 must be met independently of the provisions and definitions of K.S.A. 1987 Supp. 79-5201.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Braden
Deputy Attorney General

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