



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

August 17, 1992

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 92- 108

The Honorable Mark Parkinson
State Representative, 14th District
16000 W. 136th Terr.
Olathe, Kansas 66062

Re: Wildlife, Parks and Recreation -- Boating and Water
Activities; General Provisions -- Definitions;
Vessel; Sail Board

Synopsis: A sail board is a watercraft propelled by wind
action upon a sail for navigation on the water and
accordingly falls within the meaning of the term
"vessel" as defined by K.S.A. 1991 Supp.
32-1102(a). Cited herein: K.S.A. 1991 Supp.
32-1102; 32-1110; 32-1111; 32-1119; 32-1126;
32-1128; 32-1129; 32-1131; 32-1135.

* * *

Dear Representative Parkinson:

As representative for the 14th district, you inquire whether
sail boards, also known as windsurfers, fall within the
meaning of the term of "vessel" as defined in K.S.A. 1991
Supp. 32-1102, thus subjecting owners of sail boards to the
numbering and registration requirement of K.S.A. 1991 Supp.
32-1110 and K.S.A. 1991 Supp. 32-1111.

A meaningful discussion of the issue you present must begin
with the 1981 decision to except sail boards from the United
States Coast Guard personal floatation device (PFD) carriage
requirement.

"[T]his [decision] results from a determination that sailboards should not be subject to Federal regulation. So that state and local governments may be free to regulate sailboards if the need arises, they are being exempted from a provision in the Federal Boat Safety Act of 1971 that would prohibit such action. As the Federal government will no longer be involved in the regulation of sailboards, an exemption previously granted to one sailboard manufacturer that allowed its products to be used without personal flotation devices is being terminated. These actions will allow the Coast Guard to withdraw from an area in which there was never a clearly established need for its involvement, while preserving the opportunity for such involvement at more appropriate levels of government.

. . . .

"Although the Coast Guard has determined that regulation of sailboards under the Federal Boat Safety Act of 1971 is not needed at this time, it recognizes that there might be State interest in doing so. The Federal preemption provision in section 10 of the Act (46 U.S.C. 1459) prohibits States from imposing safety standards or associated equipment requirements that are not identical to those issued by the Federal government. However, States may be exempted from this prohibition under Section 9 of the Act (46 U.S.C. 1458). Such an exemption is being granted as part of this action so that States that find it necessary to regulate sailboards may be free to do so. . . ."
46 Fed.Reg. 42288, 42289 (August 20, 1981).

Against this background, in 1989 the boating and water activities statutes were re-enacted as a part of the Kansas wildlife, parks and recreation act. In that act the following definitions are found:

"'Vessel' means any watercraft designed to be propelled by machinery, oars, paddles or wind action upon a sail for navigation on the water." K.S.A. 1991 Supp. 32-1102(a).

"'Sail board' means a surfboard using for propulsion a free sail system comprising one or more swivel-mounted rigs (mast, sail and booms) supported in an upright position by the crew and the wind." K.S.A. 1991 Supp. 32-1102(p).

If a sail board is considered to be a type of vessel, it falls within the requirement for vessel numbering and registration. K.S.A. 1991 Supp. 32-1110 and K.S.A. 1991 Supp. 32-1111. We note that sail boards do not fall within any of the exemptions for numbering set forth in K.S.A. 1991 Supp. 32-1113. In addition, if a sail board is a vessel, certain prohibitions relating to the operation of vessels are applicable. See K.S.A. 1991 Supp. 32-1126; 32-1128; 32-1131; 32-1135.

In addressing your question, we look first for legislative intent as may be discerned from language within the boating and water activities act. A primary rule in construing a statute is to determine from its language the intent of the legislature. Henre v. Board of Education, 201 Kan. 251 (1968).

Within K.S.A. 1991 Supp. 32-1119 is found the following:

"(f) Every vessel, other than sail boards used for wind surfing, racing shells or rowing sculls shall carry at least one coast guard approved lifesaving device of the sort prescribed by rules and regulations of the secretary, in good and serviceable condition, for each person on board, so placed as to be readily accessible. . . ." (Emphasis added).

From this language it would appear that the legislature intended that sail boards be considered a type of vessel, but exempted from the PFD carriage requirement. (Operators of all vessels are required, however, to ensure that persons under the age of 12 years wear a PFD while aboard such vessel. K.S.A. 1991 Supp. 32-1129).

This same use of language is carried through by the secretary of wildlife and parks in K.A.R. 115-30-1:

"(a) All vessels required to be numbered pursuant to 1989 HB 2002, section 142 [now K.S.A. 1991 Supp. 32-1110], except sailboards, shall display the identification number issued by the department to the vessel owner and the decals supplied by the department of the vessel owner as follows:" (Emphasis added).

The proper manner to display the numbering decals for sail boards is then specified in K.A.R. 115-30-1(b).

The language of K.A.R. 115-30-1 implies that the secretary also considered sail boards to be a type of vessel, but which require a numbering decal display distinct from that required of other types of vessels. We consider this regulation to be the secretary's interpretation of K.S.A. 1991 Supp. 21-1111 which should be given great deference. Kansas University Police Officers Association v. Public Employee Relations Board, 16 Kan.App.2d 438 (1991).

Turning now to the language used in the definition of the term "vessel" in K.S.A. 1991 Supp. 32-1102(a), the inquiry becomes whether a sail board is a "watercraft designed to be propelled . . . by wind action upon a sail for navigation on the water." There can be no dispute that a sail board by definition is a watercraft which is propelled by wind action upon a sail. K.S.A. 1991 Supp. 32-1102(p). The more difficult question is whether a sail board is propelled by such wind action upon a sail for navigation upon the water.

Kansas courts, not surprisingly, have never had occasion to construe the word "navigation." We therefore must look to other sources. A commonly accepted definition is found within United States v. Monstad, 134 F.2d 986, 987 (Ca. 1943) where it was said:

"'Navigate' is defined as to journey by water; to go in a vessel; to sail or manage a vessel; to use the waters as a highway for commerce or communication; ply. Hence, to direct one's course through any medium; to steer, especially to operate an airplane or airship. . . ."

'Navigate' means to steer, direct or manage a vessel, and implies that the act is done by those on board of the vessel itself."

The word "navigate" is used in two distinct senses - one meaning merely to move about and the other to move about with management or guided direction. Sail boards clearly move about in or on water. But do they move about with guided direction or management of the operator? The definition of sail board as found in K.S.A. 1991 Supp. 32-1102(p) does not provide information regarding the operation of such a watercraft. Guidance, however, is found in 46 Fed.Reg. 42288 (August 20, 1981) in the Coast Guard discussion regarding the exemption of sail boards from federal regulation:

"[T]he 'Windsurfer' is basically a surfboard with a triangular sail on a swivel mounted mast. There is no rudder nor any rigging or stays. The operator maneuvers the boat through the trim of the hand-held sail and distribution of body weight on the surfboard." (Emphasis added).

With this understanding, it appears to us that not only does a sail board go or move about the water, the operator manages the operation of the sail board. In other words, in our opinion a sail board is a watercraft designed to be propelled by action upon a sail for navigation on the water and accordingly falls within the meaning of the term "vessel" as defined by K.S.A. 1991 Supp. 32-1102(a).

With your request for our opinion you include Missouri Attorney General Opinion No. 43-91, Texas Attorney General Opinion No. JM-320 and a Wyoming Attorney General memorandum dated October 7, 1987. You also direct our attention to People v. Heiple, 478 N.E.2d 1388 (Ill. 1985) and People v. King, 391 N.W.2d 462 (Mich. 1986). Those opinions and decisions determined under applicable state law that a sail board or windsurfer is not a vessel. We distinguish those determinations because of the manner in which "vessel" is defined in K.S.A. 1991 Supp. 32-1102(a). In addition, in each of those opinions and decisions the underlying concern was a PFD carriage requirement for vessel operators. In Kansas, as mentioned, sail boards are specifically excluded from such requirement. K.S.A. 1991 Supp. 32-1119(f).

In conclusion, it is our opinion that a sail board is a watercraft propelled by wind action upon a sail for navigation on the water and accordingly falls within the meaning of the term "vessel" as defined by K.S.A. 1991 Supp. 32-1102(a).

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Camille Nohe
Assistant Attorney General

RTS:JLM:CN:bas