

Subject

FILE

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STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

August 9, 1974

Opinion No. 74-266

Lt. Col. Allen Rush
Assistant Superintendent
Kansas Highway Patrol
State Office Building
Topeka, Kansas 66612

Dear Colonel Rush:

In your letter of May 17, 1974, you inquire whether under the provisions of Senate Bill 587, § 8-1719, as passed by the 1974 Kansas Legislature, a police officer would be prohibited from using a "spot lamp" for the purpose of stopping a moving violator vehicle or for the purpose of illuminating the interior of such vehicle for the protection of the officer after the vehicle is stopped. You further inquire whether under the provisions of § 8-1720, the use of a "spot lamp" emitting a flashing red light, rather than a solid or focused light, would be prohibited.

Section 8-1719 provides as follows:

"(a) Spot lamps. Any motor vehicle may be equipped with not to exceed two (2) spot lamps, and every lighted spot lamp shall be so aimed and used that no part of the high intensity portion of the beam will strike the windshield, or any windows, mirror or occupant of another vehicle in use."

The statutory provision which this new section replaces provides as follows:

"(a) Spot lamps. (1) Any motor vehicle may be equipped with not to exceed one spot lamp, and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no

Lt. Col. Allen Rush
August 9, 1974
Page 2

part of the high intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred (100) feet ahead of the vehicle." K.S.A. 8-589.

As you note in your letter, the terms "spot lamp" and "spot-light" are nowhere defined in our statutes. Webster's New World Dictionary defines "spotlight" as "a strong beam of light focused on a particular person, thing, etc., as on a stage" and "a lamp used to project such a light, as on an automobile." The word "focused" is partially defined in terms of "making a clear image." Webster's Seventh New Collegiate Dictionary adds "something that illuminates brightly."

You advise that the red beam emitted from the "lamp" located on your patrol vehicles is used to stop violators and that the rotating dome light or the alternately flashing red light atop patrol vehicles are used to alert approaching traffic to the stopped vehicles. Your technical information indicates that the intensity of the red beam is some 20,000 candlepower less than that of a conventional "spotlight." The spot lamp used in patrol vehicles falls squarely within the letter of § 8-1719. The phrase "high intensity beam" is, of course, relative, and no spot lamp of any specified power is expressly exempted from the prohibition.

However, the strict letter of the statute is to be construed in light of its historical background. The portion of K.S.A. 8-589 quoted above was first enacted in 1937. See ch. 283, § 89, L. 1937. This language has remained unchanged for the past 37 years, until the 1974 revision. The new and somewhat different language in this amendment suggests no substantial or particular change in the spirit and purpose of the statute. The use of spot lamps on patrol cars as you describe has been a common and apparently unquestioned practice for many years. Inability to use the spot lamps would seriously impair the patrol in attracting the attention of drivers of violator vehicles who were sought to be stopped, save for resort to sirens or other devices not readily adaptable to that use. Given this background, the language of the 1974 amendment ought not in our view be construed to apply to the spot lamps used on patrol and other law enforcement vehicles unless such construction is necessary to serve a clear legislative purpose. In the Intoxicating-Liquor Cases, 25 Kan. 751 (1881), Justice Brewer stated a helpful and applicable rule:

Lt. Col. Allen Rush
August 9, 1974
Page 3

"We have had occasion to notice heretofore the cardinal canon of construction, which is that the intent when ascertained governs, and to that all mere rules of interpretation are subordinate. . . . The letter does not always express the intent. 'A thing which is within the intention of the makers of a statute, is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers; and such construction ought to be put upon it as does not suffer it to be eluded.'" [Citations omitted.] [Emphasis supplied.]

Although the spot lamps in question are fairly within the letter of the statute, in view of the history of the statute itself, the history of usage of such lamps for law enforcement purposes and the lack of any affirmative indication that the Legislature intended to bring such lamps within the scope of the statute as a departure from past and tacitly accepted custom, it is our view that § 8-1719 should not be construed to prohibit the use of such lamps. Applying the rule of construction cited above, although the prohibition against these spot lamps would appear to be within the letter, it is our opinion that they should not be construed as being within the spirit and intent of the subject provision, and are thus excepted from its prohibition.

Very truly yours,


VERN MILLER
Attorney General

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