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December 27, 1979

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ATTORNEY GENERAL OPINION NO. 79- 307

Mr. Robert F. Duncan
Atchison City Attorney
City Hall
515 Kansas Avenue
Atchison, Kansas 66002

Re: Automobiles and Other Vehicles--Uniform Act
Regulating Traffic on Highways--Operation of
Snowmobiles on City Streets

Synopsis: A city may adopt an ordinance authorizing snowmobiles to use the city's streets, but the ordinance must restrict such use to extremely limited and exceptional circumstances, such as those specifically identified in K.S.A. 8-1585. Any ordinance which authorizes this use of city streets under other than such restricted circumstances would exceed the city's statutory authority.

* * *

Dear Mr. Duncan:

You have requested our opinion as to whether the City of Atchison has the authority to adopt an ordinance allowing the operation of snowmobiles on the City's streets. As you have noted, the state statute governing the operation of snowmobiles is K.S.A. 8-1585, and your inquiry is prompted by our interpretation of that statute in Attorney General Opinion No. 79-96.

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In that prior opinion, we found that K.S.A. 8-1585 precludes the operation of snowmobiles on any controlled-access highway, and the operation thereof on other highways also is precluded, except under three specified circumstances. One such circumstance is where "such operation is authorized by the authority having jurisdiction over the highway." The essential thrust of your inquiry, therefore, goes to the nature and extent of the regulatory authority vested in the various highway authorities, within their respective jurisdictions, by this statute.

Our Opinion No. 79-96 addressed the question of whether a snowmobile, which is operated on public highways in compliance with 8-1585, must be registered under the state's vehicle registration statutes. In answering that question in the negative, we stated:

"By virtue of K.S.A. 8-1585, we find no legislative intent that snowmobiles be operated on public roads, except under the most restricted of circumstances, and it is our opinion that registration of such vehicles would not be required under K.S.A. 8-127 when the operation thereof is confined to the exceptional circumstances stated in 8-1585."

We think the foregoing statement of legislative intent is relevant to your inquiry. While 8-1585 does not specifically define the scope of a highway authority's ability to authorize the use of public highways by snowmobiles, it is our opinion that such authority must be exercised within the context of the entire statute. Thus, we have concluded that any ordinance enacted by the City of Atchison authorizing use of the City's streets by snowmobiles must limit such operation to "the most restricted of circumstances" in consonance with our determination of the statute's underlying legislative intent.

Several factors bearing upon the legislature's intent in enacting 8-1585 have persuaded us to this conclusion. First, it is to be noted that the regulatory power granted to the various highway authorities by this statute is exceptional in its nature. Thus, the basic purpose of the statute is to prohibit use of snowmobiles on streets and highways. The power granted to highway authorities is an exception to this clear statement of legislative intent, and as such, it is to be construed very narrowly. As was stated in Broadhurst Foundation v. New Hope Baptist Society, 194 Kan. 40 (1964), regarding an exception to our redemption statutes:

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"The statutes must, of course, be construed in their entirety with a view of giving effect to the legislative intent. It must be remembered that ordinarily a strict or narrow interpretation is applied to statutory exceptions In construing a statute, any doubt should be resolved against the exception, and anyone claiming to be relieved from the statute's operation must establish that he comes within the exception." Id. at 44.

In order to give effect to the legislative intent to prohibit the use of snowmobiles on public highways except under very restrictive circumstances, we must construe the power granted to highway authorities so as not to obviate such legislative purpose. If we were to construe the statutory exception in question as providing local authorities the ability to legislatively grant to snowmobiles the unrestricted use of highways within their respective jurisdictions, such construction most certainly would negate the overriding legislative objective.

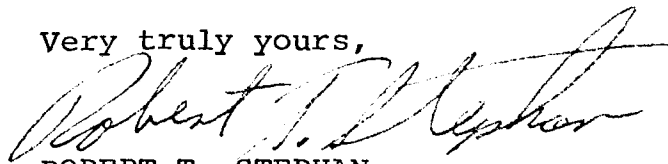
A second factor bearing upon our conclusion is the fact that K.S.A. 8-1585 is part of the legislative enactment styled as the Uniform Act Regulating Traffic on Highways (see K.S.A. 8-2204), and in keeping with its declared jurisdictional application (see K.S.A. 8-2001), such enactment is uniformly applicable throughout the state. Thus, due to the uniform application of this enactment, the home rule powers of cities (Kan. Const., Art. 12, §5) and counties (K.S.A. 1979 Supp. 19-101a) cannot be used to avoid or deviate from its provisions. Moreover, because of the legislature's declared intention of applying such law uniformly throughout the state "in all cities and other political subdivisions therein" (K.S.A. 8-2001), we are constrained to interpret the various sections and provisions thereof so as to achieve, wherever possible, the legislative purpose. Again, assuming 8-1585 were construed so as to allow cities or counties to enact local legislation authorizing snowmobiles to use the public roads therein under other than exceptional circumstances, the objective of statewide uniformity would be mitigated. It would create a patchwork system for regulating highway operation of these off-the-road vehicles.

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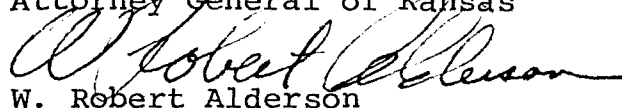
Furthermore, just as we found in Opinion No. 79-96 that K.S.A. 8-1585 gives legislative recognition to the fact that snowmobiles are off-the-road vehicles which are not intended for highway use, and that a very restricted use of the highways pursuant to 8-1585 did not necessitate the registration of such vehicles, a similar finding can be made under these circumstances regarding other requirements of the Uniform Act. That is, as long as the operation of snowmobiles is restricted to exceptional circumstances, such as those specifically enumerated in 8-1585, we do not believe such operation subjects these vehicles to the various other provisions of the Uniform Act. However, if such operation were not so restricted, then other provisions of the enactment, such as the vehicle equipment requirements contained in K.S.A. 8-1701 et seq., would be applicable, and because of the uniform applicability of this enactment, a city or county would be without authority to eliminate, alter or otherwise modify these requirements. Thus, if a city ordinance authorizes the use of its streets by snowmobiles, under other than exceptional circumstances, it would in our judgment necessitate compliance by these vehicles with all statutory requirements applicable to motor vehicles.

For the foregoing reasons, it is our opinion that an ordinance adopted by the City of Atchison pursuant to K.S.A. 8-1585 can authorize snowmobiles to use the City's streets under exceptional circumstances, but any such ordinance which authorizes such use under other than the most restricted of circumstances, would exceed such city's statutory authority. We are unable to be more precise as to what constitutes "exceptional circumstances," since this requires an analysis of each set of circumstances to determine compliance with the legislative intent, and we have not been apprised of any specific proposed ordinance under consideration by the City of Atchison, although we note from the enclosures with your letter of request that some suggestion has been made as to restricting the operation of snowmobiles to certain streets. While that suggestion has not been incorporated into a specific legislative proposal, it would be our judgment that such restriction would not be sufficient in and of itself to warrant a finding that it was in harmony with the intent and purpose of K.S.A. 8-1585.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk