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December 27, 1979

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ATTORNEY GENERAL OPINION NO. 79-308

Col. Allen Rush, Superintendent
Kansas Highway Patrol
Suite 130
Townsite Plaza Building No. 2
200 East Sixth Street
Topeka, Kansas 66603

Re: Automobiles and Other Vehicles--Size, Weight
 and Load of Vehicles--Exemptions from Gross
 Weight Limitations

Synopsis: Subsection (b) of K.S.A. 8-1909 provides an exemption from the allowable gross weights for vehicles and combinations of vehicles on certain highways designated by the secretary of transportation pursuant thereto. Said exemption applies to truck tractors and dump semitrailers hauling specified materials to a construction site, highway maintenance project, construction project or "other storage facility." By application of ejusdem generis and other rules of statutory construction, it is clear that the legislature intended "other storage facility" to be a storage facility used in connection with construction, repair or maintenance activities, and it cannot include a coal storage facility at a coal-powered electric generating plant or facility that is already operating and not under construction.

There is no statutory time limit prescribed for the storage of materials hauled pursuant to said exemption.

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Dear Col. Rush:

You have posed several questions regarding K.S.A. 8-1909(b), which authorizes the state's secretary of transportation to prescribe the allowable gross weights of vehicles or combinations of vehicles being moved or operated on certain highways of this state. The secretary's authority is to be exercised by designating highways and bridges on which there will be applicable the gross weights set forth in this subsection, pursuant to a table which correlates the distance between extreme axles of the vehicle or combination of vehicles with the allowable gross weight. Following said table there is a proviso, which states in part:

"Provided, The above table shall not apply to truck tractor and dump semi-trailer when such are used as a combination unit exclusively for the transportation of sand, salt for highway maintenance operations, gravel, slag stone, limestone, crushed stone, cinders, coal, blacktop, dirt or fill material, when such vehicles are used for transportation to a construction site, highway maintenance or construction project or other storage facility"
(Emphasis added.)

The foregoing exception clearly applies to designated vehicles transporting specified material, but as indicated by the emphasized portion of the above-quoted provision, the exception applies only when such material is being transported to certain locations, i.e., "to a construction site, highway maintenance or construction project or other storage facility." Thus, this exception has three essential elements: a combination of vehicles, the material being transported and the material's destination.

You have inquired whether a truck tractor and dump semitrailer hauling coal to a coal-powered electric generating facility are exempt under this "exclusionary clause." Certainly, the combination of vehicles and the material being transported fit the proviso's requirements, but whether an electric generating facility is an appropriate destination for the coal depends on whether such facility is encompassed by the term "other storage facility." You have expressed some uncertainty regarding the meaning of this term, questioning in essence whether a storage facility is one used in connection with "a construction site, [or] highway maintenance or construction project," or whether it includes any storage facility.

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We certainly recognize the basis for your uncertainty. This term cannot be understood clearly from the statute itself, in that on its face it is susceptible of either of the meanings you have identified. However, for the reasons discussed in the succeeding paragraphs, it is our judgment that "other storage facility" cannot include an electric generating plant or facility.

Because of the ambiguity of the statutory language, our conclusion has been predicated on our determination of the statute's underlying legislative intent. Such determination has been facilitated by the application of rules of statutory construction. In this instance, the most pertinent of these rules is the rule of ejusdem generis. In Trego Wakeeny State Bank v. Maier, 214 Kan. 169 (1974), the Kansas Supreme Court explained the rule thusly:

"The rule of ejusdem generis is a well known maxim of construction to aid in ascertaining the meaning of a statute or other written instrument which is ambiguous. Under the maxim, where enumeration of specific things is followed by a more general word or phrase, such general word or phrase is held to refer to things of the same kind, or things that fall within the classification of the specific terms." Id. at 174.

It is apparent that the language in question here creates a situation for the application of this rule. The term "other storage facility" is general in nature and is preceded by an enumeration of specific locations, i.e., "construction site"; "highway maintenance project"; and "construction project." Therefore, by applying ejusdem generis, it is our opinion that the legislature clearly intended "other storage facility" to be a storage facility used in connection with construction, repair or maintenance activities. The hauling of coal by a truck tractor and dump semitrailer to a storage facility at an electric generating plant or facility, already operating and not under construction, is not circumscribed by such activities.

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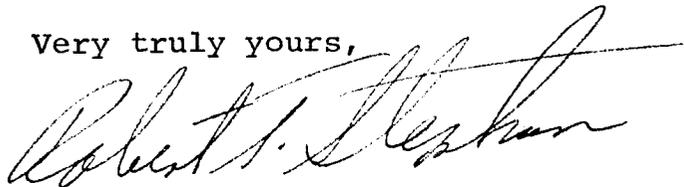
Our conclusion also is in harmony with another well-recognized rule of statutory construction, that where there is doubt as to the meaning of a proviso in a statute, it is to be narrowly construed, in order to expedite the general legislative mandate to which it constitutes an exception. This principle was stated in City of Winfield v. Board of County Commissioners, 205 Kan. 333 (1970) as follows:

"A proviso which follows and restricts an enacting clause general in its scope should be strictly construed, so as to take out of the enacting clause only those cases which are fairly within the terms of the proviso" Id. at 336, 337.

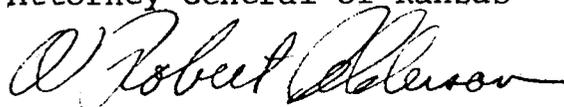
With this maxim in mind, it is clear the legislature intended that there be exemptions for hauling the designated material when it is to be used in connection with specific, enumerated activities or placed in attendant storage facilities. However, to interpret the "exclusionary clause" in K.S.A. 8-1909 so broadly as to find "other storage facility" includes any storage facility, regardless of the activity with which it is associated, would mitigate to a great degree the general legislative mandate that the size and weight of vehicles be regulated.

Your final question, in essence, is whether there is a time limit on the storage of materials being hauled under the auspices of this exemption. The statute is silent in this regard, and we find nothing therein to indicate that the legislature intended to impose a time limit. Absent such showing, we are constrained to find that no such time limit exists.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk