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June 9, 1980

ATTORNEY GENERAL OPINION NO. 80-133

The Honorable John Sullivan
Representative Ninetieth District
Sedgwick County
3044 Wellington Place
Wichita, Kansas 67204

Re: Crimes and Punishments -- Unlawful Use of Radar Detectors -- Definition and Punishment

Synopsis: Provided constitutional and procedural standards are employed, the Kansas legislature may make unlawful the use of radar detection devices and provide penalties for use of such a device and allow seizure thereof. Cited herein: 47 U.S.C. §§151, et seq.

* * *

Dear Representative Sullivan:

You have inquired as to the constitutionality of Section 1 of 1980 House Bill No. 2931 which would proscribe the use of radar detectors and "Fuzz Busters" on the highways of this state. This opinion will address House Bill No. 2931 in its amended form, i.e., with lines 44 through 46 omitted.

After considering the proposed law, we have determined that there are at least four perceptible issues to be examined. Briefly stated, these issues, which will be discussed separately, are:

1. Would the proposed law conflict with federal regulation of radio communications?

2. Does the proposed law contain an impermissible presumption?

3. Are the constitutional due process rights of individuals possessing these devices violated when these devices are subjected to seizure and forfeiture?

4. Can the state police power properly be invoked to prohibit the sale of these devices within the state?

To commence this discussion and for purpose of clarification Section 1 of House Bill No. 2931 appears below in its amended form:

"Section 1. (a) It shall be unlawful for any person to operate a motor vehicle upon the highways of this state when such vehicle is equipped with any device or mechanism to detect or interfere with the emission of radio microwaves in the electromagnetic spectrum, which microwaves are employed by police to measure the speed of motor vehicles upon the highways of this state for law-enforcement purposes. It shall be unlawful to use any such device or mechanism upon any such motor vehicle upon the highways. It shall be unlawful to sell any such device or mechanism in this state. The provisions of this section shall not apply to any receiver of radio waves utilized for lawful purposes to receive any signal from a frequency lawfully licensed by any state or federal agency. Any person violating any provision of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100). Any such prohibited device or mechanism found as the result of an arrest made under the provisions of this act shall be seized and when the same is no longer needed as evidence shall be disposed of as provided in K.S.A. 1979 Supp. 22-2512(4). The presence of any such prohibited device or mechanism in or upon a motor vehicle upon the highways of this state shall constitute prima facie evidence of the violation of this section.

"(b) This section shall not apply to motor vehicles owned by the state or any political subdivision thereof and which

> are used by the police of any such government nor to law-enforcement officers in their official duties, nor to the sale of any such device or mechanism to law-enforcement agencies for use in their official duties."

The first issue with which we are concerned involves the possibility that all legislation of this type has no legal force as a result of the operation of the supremacy clause of the Constitution of the United States. (Art. VI, Cl. 2.)

The Communications Act of 1934, 47 U.S.C. §§ 151 et seq., was enacted by Congress as a proper exercise of its power over commerce as a comprehensive scheme for the regulation of interstate communication. Benanti v. United States, 355 U.S. 96, 2 L.Ed.2d 126, 78 S.Ct. 155 (1957). However, our research reveals nothing in the language of this Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature pertaining to the use of radar for law enforcement purposes. "In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." Parker v. Brown, 317 U.S. 341 at 351, 87 L.Ed. 315 at 326, 63 S.Ct. 307 (1943). It also is important to note that the United States Supreme Court in Joseph E. Seagram & Sons, Inc. v. Hostetter, 384 U.S. 35 at 43, 16 L.Ed.2d 336 at 343, 86 S.Ct. 1254 (1966) acknowledged: "The mere fact that state action may have repercussions beyond state lines is of no judicial significance so long as the action is not within that domain which the Constitution forbids." (Citations omitted.)

In examining the Communications Act of 1934 it does not appear that the provisions of HB 2931 proscribing the use or sale of radar detection devices within the state, actually obstructs or burdens any federal regulation. In the absence of a manifest conflict with a federal statute or Constitutional provision it may be inappropriate to speculate as to circumstances under which HB 2931 would interfere with the Communications Act of 1934 or any other Federal law, in light of the principle of statutory construction which was recognized in Exxon Corporation et al., v. Governor of Maryland, et al., 437 U.S. 117 at 130, 57 L.Ed.2d 91 at 103, 98 S.Ct. 2207 (1978): "[I]n this as in other areas of coincident federal and state regulation, the 'teaching of this Court's decisions . . . enjoin[s] seeking out conflicts between state and federal regulation where none clearly exists.' " (Citations omitted.)

The Commonwealth of Virginia has enacted a statute having provisions very similar to those in House Bill No. 2931 which proscribe the use of devices on motor vehicles intended to detect the presence of radar being used for law enforcement purposes. In Crenshaw v. Commonwealth, 219 Va. 38, 245 S.E.2d 243 (1978), the appellants challenged the statute as being invalid and unenforcible, due to the supremacy clause of the U.S. Constitution and the enactment of the Communications Act of 1934, supra, which was argued had the effect of occupying the field and preempting all state legislation in the area. The Virginia supreme court relied upon Head v. New Mexico Board, 374 U.S. 424, 430, 10 L.Ed.2d 983, 83 S.Ct. 1759 (1963), Florida Avocado Growers v. Paul, 373 U.S. 132, 142, 10 L.Ed.2d 248, 83 S.Ct. 1210 (1963) and Kroeger v. Stahl, 248 F.2d 121, 123 (3rd Cir. 1957) to uphold the statute in light of the preemption attack. The Virginia court quoted from Head, supra.:

> "In areas of the law not inherently requiring national uniformity, our decisions are clear in requiring that state statutes, otherwise valid, must be upheld unless there is found 'such actual conflict between the two schemes of regulation that both cannot stand in the same area, [or] evidence of a congressional design to preempt the field.' " (Footnote and citations omitted.) 245 S.E.2d at 245.

The conviction in this case was reversed and charge dismissed by the Virginia Supreme Court because of the possibility that the conviction may have been based in whole or in part upon an invalid presumption contained within the statute. This same presumption has been omitted in the amended version of House Bill No. 2931.

In People v. Gilbert, 88 Mich. App. 764, 279 N.W.2d 546 (1979), the defendant had been charged with a violation of a state statute, prohibiting the possession of a receiving device designed to intercept radio signals broadcast on frequencies assigned to police agencies by the Federal Communications Commission, if preceded by proof that the defendant had equipped his car with a radar detector. However, the Michigan court reversed the conviction and dismissed the charge due to the fact that this had been the first case in which the Michigan statute had been applied to radar detectors and henceforth this opinion would serve to give Michigan motorists due notice of this new application. In People v. Gilbert, supra, the defendant maintained that the Michigan statute he allegedly violated had been preempted by reason of the Federal Communications Act of 1934. The court responded as follows:

> "There are two tests to apply in determining if state law has been preempted by Federal legislation. There are

> some areas where the scheme of regulation may be so pervasive, the Federal interest so dominant, or the need for uniformity so great as to exclude state regulation altogether. See Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947), and Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 143-144, 83 S.Ct. 1210, 10 L.Ed.2d 248 (1963).
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> "However in Head v. New Mexico Board of Examiners in Optometry, 374 U.S. 424, 431, 83 S.Ct. 1759, 10 L.Ed.2d 983 (1963), the Court held that the Federal regulatory scheme was not so pervasive, the need for uniformity so strong or Federal interest so dominant as to prohibit the states from regulating the content of advertising broadcast over the airwaves. We believe a similar result is warranted here. Although the Federal scheme allocating frequencies to persons for transmission uses may be so pervasive as to occupy the field, Head, supra at 430, n. 6, 83 S.Ct. 1759, the question of who may receive these frequencies has not been so addressed in the Federal scheme. Nor is the Federal interest in this subject so dominant or the need for uniformity so strong as to prohibit state regulations. On the contrary, the state interest in assuring that the police will be effective in maintaining the safety of the highways is consistent with and complementary to the Federal interest of lowering traffic speed to conserve energy. Although other states may not ban the possession of 'Fuzzbusters', this does not create any potential conflict requiring uniformity. Motorists from adjoining states should simply leave their 'Fuzzbusters' behind." 279 N.W.2d at 550.

The Michigan Court of Appeals concluded that this situation was not an instance of federal preemption. The court states in pertinent part:

> "[T]he Michigan statute must be upheld unless there is found 'such actual conflict between the two schemes of regulation that both cannot stand in the same area, [or] evidence of a congressional design to preempt the field.' Head, supra, at 430, 83 S.Ct., at 1763. Defendant is unable to point out any actual conflict between the Federal and state scheme or of a congressional design to preempt the field. Those Federal provisions which authorize the FCC to issue licenses to operate a radio transmitter in no way conflict with the state prohibition upon the use of a species of radio receiver.

> Similarly, those portions of the Federal scheme providing for sanctions against licensed operators do not conflict with the state statute's criminal penalty for performing a completely distinct act. Therefore, we hold that M.C.L. §750.508; M.S.A. §28.776 is not preempted by Federal legislation. In accord, Crenshaw v. Commonwealth, Va. 245, S.E.2d 243, 245-246 (1978)." (Emphasis supplied by court.) 279 N.W.2d at 550-551.

Article I, Section 8, Clause 3 of the Constitution of the United States provides that Congress shall have power to regulate commerce with foreign nations, and among the several states. A question may arise as to whether House Bill 2931, if enacted, would conflict with the commerce clause of the United States Constitution. In considering this issue it is helpful to refer to 2 Am.Jur.2d Administrative Law §219 which provides in pertinent part:

> "The commerce clause gives to Congress a power over interstate commerce which is both paramount and broad in scope. But due regard for state legislative functions has long required that this power be treated as not exclusive. It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce. A fortiori, there are many subjects and transactions of local concern not themselves interstate commerce or a part of its operation which are within the regulatory and taxing power of the states, so long as state action serves local ends and does not discriminate against interstate commerce, even though the exercise of those powers may materially affect it.
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> "State agencies are not deprived of jurisdiction over a subject matter merely because interstate commerce may be involved, and their regulations or orders are not nullities because they may incidentally, or to some extent, affect interstate commerce. The only requirements consistently recognized as to exercise of state authority where federal authority has not been exercised have been that the state regulation not discriminate against or place an embargo on interstate commerce, that it safeguard an obvious state interest, and that the local interest at stake outweigh whatever national interest there might be in the prevention of state restrictions." (Footnotes omitted.)

The annotation appearing at 97 L.Ed. 175 provides virtually the same information.

The second issue to be examined is whether House Bill No. 2931 contains an impermissible presumption. Bearing in mind that the presumption appearing in lines 44 through 46 has been omitted by the proponents, there remains but one other presumption. In lines 41 through 44 House Bill No. 2931 provides:

> "The presence of any such prohibited device or mechanism in or upon a motor vehicle upon the highways of this state shall constitute prima facie evidence of the violation of this section." [Emphasis supplied.]

In Crenshaw v. Commonwealth, supra, the Virginia Supreme Court was faced with a statute that proscribed radar detectors, but by means of a presumption contained in the statute, similar to the omitted provision of House Bill No. 2931, it was virtually impossible for a person charged with violating the statute to show that, although in his or her possession, the device was not operative when the citation was issued and the device seized. In the following quotation from the Crenshaw opinion the Court discusses the constitutional requirements of a valid presumption in relation to an unlawful radar detection statute. The Virginia court states in pertinent part:

> "In determining the validity of a statute making proof of one fact prima facie or presumptive evidence of another fact, a two-fold test is applied: (1) whether there is a natural and rational evidentiary connection between the fact proved and the ultimate fact presumed; and (2) whether the presumption is rebuttable. Unless the evidentiary connection exists and the presumption is rebuttable, the statute cannot be upheld against a due process attack.
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> "Here, if we were confronted with only the first sentence of the second paragraph of § 46.1-198.1, we would have no difficulty upholding the statutory presumption, as applied to an 'equipped with' violation. Given the single purpose of 'radar detectors,' we believe there is a natural and rational connection between the proved fact that such a device is present in or upon a motor vehicle and the presumed fact that the vehicle is equipped with the device. And the presumption could be rebutted by evidence that the device was unavailable or inaccessible for use, e.g., that the

device was operationally disabled or that it was locked in the trunk of the vehicle.

"But the paragraph in question contains a second sentence which states, in part, that the Commonwealth 'need not prove that the device in question was in an operative condition.' It might be argued that the only effect of this sentence is to make clear that the Commonwealth can establish a prima facie 'equipped with' violation without proof of 'operative condition.' But this proposition is already made clear by the first sentence. Instead, we believe that the effect of the second sentence, when read with the paragraph as a whole, is to exclude from consideration any evidence concerning 'operative condition' and, thus, for all practical purposes, to render irrebuttable the presumption created by the first sentence.

"Although the Attorney General argues that 'operative condition' is not an element of an 'equipped with' violation, he agrees that a motor vehicle is 'equipped with' a 'radar detector' when 'such device is present in or upon the motor vehicle and accessible or available for use' (emphasis added). Accessibility and availability are close kindreds of 'operative condition.' And, as indicated earlier when we focused solely upon the first sentence in question, the validity of the disputed presumption depends upon whether it is rebuttable by relevant matters, including inaccessibility and unavailability. Yet, the second sentence renders the presumption virtually irrebuttable by making inaccessibility and unavailability irrelevant to an 'equipped with' violation; it would not aid an accused to attempt to rebut the presumption with irrelevant matters.

"Read as a whole, therefore, the second paragraph of §46.1-198.1 permits an 'equipped with' conviction upon proof of the mere presence of a 'radar detector' in or upon a motor vehicle, despite credible evidence that the device was inaccessible or unavailable for use. Thus, the statute permits the presumption in question to be applied as a purely arbitrary mandate, violative of due process. Accordingly, we cannot allow the presumption to stand." (Citations and footnote omitted.) 245 S.E.2d at 246-247.

The Kansas Supreme Court has conclusively stated that a statutory presumption

of one fact that constitutes prima facie evidence of another is constitutionally permissible, if certain conditions are found to exist. In State v. Smith, 223 Kan. 192, 193, 194 (1977) the Court stated:

> "A statutory presumption that proof of one fact shall constitute prima facie evidence of another is rebuttable and governs only the burden of going forward with the evidence, not the ultimate burden of proof. Likewise, the use of a presumption to establish prima facie evidence does not destroy a defendant's presumption of innocence. (State v. Powell, 220 Kan. 168, 551 P.2d 902.) In order to clarify these rules an instruction should be given on the meaning of 'prima facie' as the trial court did in the instant case.
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> "The rule governing the constitutionality of statutory presumptions was set forth in State v. Haremza, 213 Kan. 201, 515 P.2d 1217, where this court stated:
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> " ' The general rule universally applied throughout the United States is that a statutory presumption will be upheld as constitutional if, in accordance with the experience of mankind, there is a natural and rational evidentiary relation between the fact proved and the one presumed; if the defendant has more convenient access to evidence relating to the fact to be presumed; and if, by requiring defendant to go forward with evidence to rebut the presumption, he is not thereby being subjected to unfairness or hardship. (Torcia, Wharton's Criminal Evidence, 13th Ed., Vol. 1. §94.) This court recognized and followed the rule in State v. Nossaman, 107 Kan. 715, 193 Pac. 347, where the following language is used in the opinion:
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> " ' ". . . It is competent for the legislature to make proof of one fact prima facie evidence of another fact essential to the guilt of the accused, where the fact presumed has a fair relation to or some natural connection with the fact to be proven. (The State v. Sheppard, 64 Kan. 451, 67 Pac. 870; 12 C.J. 1205.) The term prima facie evidence carries the inference that such evidence may be rebutted and overcome, and notwithstanding the rule, an accused has the opportunity to submit his evidence and make a full defense. The verdict must rest upon all the evidence which must establish his guilt beyond a reasonable doubt. . . .' (p. 721.) Comprehensive annotations on this subject may be found in 162 A.L.R. 495, 13 L.Ed.2d 1138, and in 23 L.Ed.2d 812. . ." ' "

In light of the preceding discussion it is our opinion that the presumption contained in lines 41 through 44 of House Bill 2931 is not unconstitutional either as a violation of due process or as a violation of a defendant's right to remain silent in a criminal proceeding under the Fifth Amendment to the United States Constitution made applicable to the states through Mapp v. Ohio, 367 U.S. 643, 6 L.Ed.2d 1081, 81 S.Ct. 1684 (1961). This presumption which would permit a finder of fact to infer from the mere fact of a defendant's unexplained possession of a radar detection device that the defendant's mere possession violates the provisions of House Bill 2931 should resist constitutional attack in that the proven fact of defendant's possession is circumstantial evidence rationally connected to the presumed facts.

The third question that we have discerned is whether the provisions which allow the seizure and disposal of the prohibited radar detection devices violate due process or other constitutional rights of the person charged with a violation of the provisions of House Bill 2931.

The provisions of lines 37 through 41 call for disposal of all radar detection devices seized by a law enforcement official pursuant to an arrest initiated under the proposed law. The law is well settled to the effect that a conviction is not required before seizure of contraband can be perfected. The annotation appearing at 3 A.L.R.2d 738 deals with the forfeiture of property that has been used unlawfully before the trial of the accused, and provides in pertinent part:

> "It is generally accepted that at the common law a conviction of the individual offender was a prerequisite to the forefeiture of the property used by him in connection with the offense. . . .
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> "In this country, however, forfeiture exists only by virtue of statute; and it is generally recognized that where a statute merely provides for a proceeding in rem for the forfeiture of illicit goods or property used in connection therewith or in connection with a statutory violation, and the forfeiture statute does not expressly or impliedly provide for a prior conviction of the individual offender, such a conviction is not a prerequisite to the forfeiture."
> 3 A.L.R.2d at 740.

The United States Supreme Court in Various Items Of Personal Property, et al., v. United States, 282 U.S. 577, 75 L.Ed. 558, 51 S.Ct. 282 (1931),

explained why the accused and the contraband involved may be treated separately:

> "At common law, in many cases, the right of forfeiture did not attach until the offending person had been convicted and the record of conviction produced. But that doctrine did not apply, as this court in an early case pointed out, where the right of forfeiture was 'created by statute, in rem, cognisable on the revenue side of the exchequer. The thing is here primarily considered as the offender, or rather the offense is attached primarily to the thing; and this whether the offense be malum prohibitum, or malum in se.' " (Citation omitted.) 282 U.S. at 580-581, 75 L.Ed. at 561. (Emphasis supplied.)

In Bramble v. Kleindienst, 357 F.Supp. 1028 (D. Colo. 1973), U.S. Certiorari denied in 419 U.S. 1069, 42 L.Ed.2d 665, 95 S.Ct. 656 (1974), the court faced a situation in which the petitioner's car was seized by federal agents almost 3 months before he was arrested pursuant to a federal indictment for the possession, intent to sell and illegal importation of marijuana. The court states in relevant part:

> "The crux of this action is the forfeiture of the plaintiff's automobile, and all arguments alleging violations of his constitutional rights ground on this same rock. The operation of this law may be harsh. For this reason forfeitures are not favored; they should be enforced only when within both the letter and spirit of the law. (Citations omitted.) To say that forfeitures are not favored is not to say that they are not valid. On the contrary, forfeitures have quite an historical background. 'It is well established in American jurisprudence, however, that absent a contrary legislative expression personal property may be seized and statutorily forfeited without payment of any compensation even though its owner may not have engaged in any conduct which may be characterized criminal or wilfully negligent.' (Citations omitted.)
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> "The Sixth Circuit Court of Appeals cited the above rule then went on to note four features in the McKeehan case [McKeehan v. United States, 438 F.2d 739 (6th Cir. 1971)] which distinguished it from the above cited precedents. The grounds included inadequacy of notice, lawfulness of

> purpose of possession, the lack of any declared legislative policy that forfeiture would aid in enforcing the criminal laws or make the instrumentalities of crime more difficult or costly to obtain, and the lack of any sound administrative or revenue purpose. The Court specifically premised its conclusion on the above stated features saying: 'Based on these facts, we find the imposition of forfeiture on the Appellant is penal and causes an unconstitutional deprivation of personal property "without just compensation." Fifth Amendment, United States Constitution.' "
> 357 F.Supp. at 1030-1031. (Footnotes omitted.)

The Kansas Supreme Court also has recognized the authority of the state to impose forfeiture provisions in criminal statutes, as follows:

> "In our opinion it is a sufficient answer to these suggestions to say that it is within the police power of the state to provide for the forfeiture of property used in violation of a criminal statute and to provide expressly that the rights of an owner or mortgagee, however innocent of the intent or purpose for which the property is to be used, shall be forfeited, and such a law is not open to the objection that it violates the fourteenth amendment by taking property without due process of law." State v. Peterson, 107 Kan. 641, 645 (1920).

The final issue addressed by this opinion is whether the provision in House Bill No. 2931 prohibiting the sale of radar detection instruments is a proper exercise of the state's police power.

The political and judicial concept known as the police power does not relate to any specialized power of government. Rather, the "police power" is comprised of the inherent right of state and local governments to enact legislation protecting the health, safety, morals or general welfare of the people within their respective jurisdictions. In determining whether any provision of House Bill No. 2931 is subject to constitutional attack, it may be helpful to review several of the basic precepts of constitutional law as explained in J. Nowack, R. Rotunda and J. Young, Constitutional Law (1978) [hereinafter cited as Nowack, Rotunda and Young].

> "Today the due process and equal protection guarantees are not significant restraints on the government's ability to act in matters of economics or social welfare. While due

> process still protects a person's liberty in society, only those liberties or rights of 'fundamental' constitutional magnitude will be actively protected by the Supreme Court. . . . Where no such right is restricted, the law need only rationally relate to any legitimate end of government. As long as there is any conceivable basis for finding such a rational relationship the law will be upheld. Only when a law is a totally arbitrary deprivation of liberty will it violate the substantive due process guarantee.
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> "The equal protection clause governs the classification of persons for benefits or burdens by the government. . . . If the government classifies persons as to their ability to exercise fundamental rights it must show the classification to be necessary to a compelling or overriding governmental interest. Similarly, if a law burdens a class of persons because of the 'suspect' traits of race, national origin or status as a resident alien the Justices will subject the law to independent 'strict scrutiny' to determine if it promotes a compelling interest of the government. But where the law classifies persons on a non-suspect basis for the exercise of liberties which are not fundamental constitutional rights the Justices will not independently review the basis for the classification. The law will be upheld so long as the Justices can conceive of a basis for terming the classification rationally related to a legitimate end of government." Nowack, Rotunda and Young at pp. 409-410.

The Kansas Supreme Court has provided an explanation of the standard used to determine whether a statute is rationally related to a legitimate purpose of government in State v. Consumers Warehouse Market, 183 Kan. 502 (1958). In relevant part, the court stated:

> "Notwithstanding the conclusion just announced, there still remains for determination whether the means chosen by the legislature are reasonably designed to accomplish the purpose of the Act, i.e., are its terms arbitrary, discriminatory, or demonstrably irrelevant to the legislative policy? This is the test of due process in the exercise of police power announced in Nebbia v. New York, supra, which, it is to be noted, is in conformity with our decision in Schaake v. Dolley, 85 Kan. 598, 118 Pac. 80, where it is said:
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> " 'When once a subject is found to be within the scope of the state's police power the only limitations upon the exercise

> of the power are that regulations must have reference in fact to the welfare of society and must be fairly designed to protect the public against evils which might otherwise occur. Within these limits the legislature is the sole judge of the nature and extent of the measures necessary to accomplish its purpose . . .' (Citation omitted.)
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> "When the relevancy of the provisions of an Act to its legislative purpose is drawn in question the judgment of the legislature cannot be superseded by that of the court if questions relating thereto are reasonably debatable." (Citation omitted.) 183 Kan. at 508-509.

In light of the preceding statement, it seems that although questions relating to the relevancy of the underlying legislative purpose of House Bill No. 2931 may arise, the legislature may reasonably believe that the use of radar detectors, as proscribed by House Bill No. 2931, tend to promote the violation of speed limit laws and for that reason may be the subject of legislation. We do not believe that the provisions of House Bill No. 2931, considered in their entirety, are so unreasonable as to violate the previously mentioned standards of due process.

The authority of the state to exercise its police power to regulate state highways has been firmly established in Smith v. State Highway Commission, 185 Kan. 445, 453-454, (1959). The question as to whether the state may apply its police power to nonresidents using state highways was resolved in Jones v. Garrett, 192 Kan. 109 (1963), where the Court stated:

> "It has been held a valid exercise of the police power of this state to regulate, limit and control the use of its highways in order to promote the safety and general welfare of the people, and this power extends to use by nonresidents as well as residents. (Riddle v. State Highway Commission, 184 Kan. 603, 339 P.2d 301; Smith v. State Highway Commission, 185 Kan. 445, 346 P.2d 250.)" 192 Kan. at 116.

Very truly yours,

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RTS:TDH:may