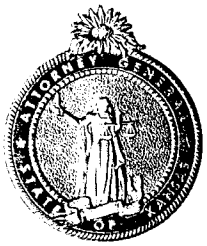
affirmed in
State V. Gibson
8 Kan App 2d 136



STATE OF KANSAS

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June 1, 1981

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ATTORNEY GENERAL OPINION NO. 81-127

Mr. Alan F. Alderson
General Counsel
Kansas Department of Revenue
State Office Building
Topeka, Kansas

BUILDING MAIL

Re: Automobiles and Other Vehicles--Size, Weight and Load of Vehicles--Penalties for Violations of Weight Restrictions

Synopsis: There is no basis for disregarding the plain and unambiguous language in K.S.A. 1980 Supp. 8-1901(c) that prescribes the schedules to be used in calculating fines for violations of the vehicular weight limitations contained in K.S.A. 8-1908 and K.S.A. 1980 Supp. 8-1909. An interpretation of these schedules according to the exact and literal import of the words used therein does not contravene the manifest purpose of the legislature, i.e., to provide for the escalation of fines for such violations in relation to the amount by which said weight limitations are exceeded. Accordingly, there is no justification for interpreting these schedules in a way that requires a modification of the language thereof. Cited herein: K.S.A. 1980 Supp. 8-1901, K.S.A. 8-1908, K.S.A. 1980 Supp. 8-1909.

* * *

Dear Mr. Alderson:

You have requested our opinion regarding subsection (c) of K.S.A. 1980 Supp. 8-1901. That subsection prescribes penalties for violations of K.S.A. 8-1908 and K.S.A. 1980 Supp. 8-1909,

which impose, respectively, restrictions on the maximum gross weight upon any wheel or any one axle of a vehicle and on the gross weight of any vehicle or combination of vehicles.

K.S.A. 1980 Supp. 8-1901(c) sets forth two schedules for computing the fines to be imposed for violations of the referenced weight limitations. Although these schedules are identical, one is used for violations of gross weight limitations on any axle or tandem axles, and the other is applicable to violations of gross weight limitations. In each instance, the fine is to be calculated according to the following schedule:

"Pounds Overweight	Rate of Fine
"up to 1000	$25.00
"1001 to 2000	3¢ per pound
"2001 to 5000	5¢ per pound
"5001 to 7500	7¢ per pound
"7501 and over	10¢ per pound"

You indicate that various courts throughout the state are applying this schedule differently, and you have asked our opinion as to the appropriate method to be used.

To illustrate the two different methods of calculating fines, you have posed a hypothetical situation where a conviction is obtained for the operation of a vehicle which exceeded the gross weight limitations applicable to such vehicle by 7,500 pounds. One method of calculating the fine for such violation is to separate the total excess weight of the vehicle (7,500 pounds) into the various weight categories prescribed by the schedule quoted above, multiply the weight in each such category by the rate of fine for such category and then add all of the figures so obtained to produce the applicable fine.

Such calculations, as regards your hypothetical, would be as follows: For the first 1,000 pounds of excess weight, the fine is $25.00; for the next 1,000 pounds the fine is computed by multiplying this excess weight by the rate of fine prescribed on the schedule (3¢ per pound) to obtain a fine of $30.00; and, similarly, the next 3,000 pounds and the last 2,500 pounds are multiplied by 5¢ and 7¢, respectively, to obtain separate fines of $150.00 and $175.00. All of these seperate fines are then added to obtain a total fine of $380.00.

We believe this to be an erroneous method of computing the fine. In order for this method to be used, it is necessary to add additional language to the statutorily prescribed schedule.

That is, in order for the foregoing calculation to represent a correct statutory interpretation, the schedules in K.S.A. 1980 Supp. 8-1901(c) would have to read substantially as follows:

Pounds Overweight	Rate of Fine
1st 1,000 lbs. or portion thereof	$25.00
Next 1,000 lbs. or portion thereof . . .	3¢ per pound
Next 3,000 lbs. or portion thereof . . .	5¢ per pound
Next 2,500 lbs. or portion thereof . . .	7¢ per pound
Remaining lbs.	10¢ per pound

Obviously, the foregoing is significantly different from the schedules prescribed in 8-1901(c), and we do not find any justification for modifying the language of the statute so as to obtain this result. While in some instances it is appropriate to modify statutory language in order to give effect to the manifest legislative intent, such modification is appropriate only "[w]hen the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature." Brown v. Keill, 224 Kan. 195, 200 (1978).

In our judgment, the plain and unambiguous language contained in the schedules set forth in 8-1901(c) requires a simple, straight forward calculation to obtain the appropriate fine for a violation of vehicular weight limitations. It requires only that the excess weight of a vehicle found to be in violation of these limitations be multiplied by the rate of fine applicable to the weight category in these schedules that includes said amount of excess weight. The amount so obtained is the amount of fine to be assessed for the violation. In the hypothetical situation you have posed, the excess weight (7,500 pounds) would be multiplied by 7¢, which is the rate of fine applicable to the excess weight category of "5001 to 7500" pounds, and the amount of the fine produced by such multiplication is $525.00.

Based on our judgment that the language in the schedules prescribed in 8-1901(c) is plain and unambiguous, we have been guided by the following statement in Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., 224 Kan. 357 (1978):

> "The fundamental rule of statutory construction, to which all other are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes. Easom v. Farmers Insurance Co., 221 Kan. 415, Syl. 2, 560 P.2d 117 (1977);

> Thomas County Taxpayers Ass'n v. Finney, 223 Kan. 434, 573 P.2d 1073 (1978); Brinkmeyer v. City of Wichita, 223 Kan. 393, 573 P.2d 1044 (1978)." 224 Kan. at 367.

The Court also has provided guidance in ascertaining the legislature's intent, and we believe the following statement of the Court to be of relevance here:

> "A primary rule for the construction of a statute is to find the legislative intent from its language, and where the language used is plain and unambiguous and also appropriate to the obvious purpose the court should follow the intent as expressed by the words used and is not warranted in looking beyond them in search of some other legislative purpose or extending the meaning beyond the plain terms of the Act. (Alter v. Johnson, 127 Kan. 443, 273 Pac. 474; Hand v. Board of Education, 198 Kan. 460, 426 P.2d 124; City of Overland Park v. Nikias, 209 Kan. 643, 498 P.2d 56; Hunter v. Haun, 210 Kan. 11, 499 P.2d 1087.)" City of Kiowa v. Central Telephone & Utilities Corporation, 213 Kan. 169, 176 (1973).

Of similar import is the Court's pronouncement in Lakeview Gardens, Inc. v. State, ex rel. Schneider, 221 Kan. 221 (1976):

> "[T]his court must ascertain and give effect to the intent of the legislature. In so doing we must consider the language of the statute; its words are to be understood in their plain and ordinary sense. (Hunter v. Haun, 210 Kan. 11, 13, 499 P.2d 1087; Roda v. Williams, 195 Kan. 507, 511, 407 P.2d 471.) When a statute is plain and unambiguous this court must give effect to the intention of the legislature as expressed rather than determine what the law should or should not be. (Amoco Production Co. v. Armold, Director of Taxation, 213 Kan. 636, 647, 518 P.2d 453; Jolly v. Kansas Public Employees Retirement System, 214 Kan. 200, 204, 519 P.2d 1391.)" 221 Kan. at 214.

Also, without unduly burdening this opinion by further quotation, we commend to your attention the following cases in support of

the foregoing rules of statutory construction: Henre v. Board of Education, 201 Kan. 251, 253 (1968); Phillips v. Vieux, 210 Kan. 612, 617 (1972); Weeks v. City of Bonner Springs, 213 Kan. 622, 629 (1974); Underwood v. Allmon, 215 Kan. 201, 204 (1974); State v. V.F.W. Post No. 3722, 215 Kan. 693, 695 (1974); Sampson v. Rumsey, 1 Kan.App.2d 191, 193 (1977); Jackson County State Bank, 1 Kan.App.2d 649, 650 (1977); and Rosedale State Bank & Trust Co. v. Stringer, 2 Kan.App.2d 331, 339 (1978).

We also are cognizant of the penal character of K.S.A. 1980 Supp. 8-1901. In this context, the rule of construction reiterated in State v. Howard, 221 Kan. 51 (1976), is relevant:

> "We are not unaware or unmindful of the rule requiring strict construction of penal statutes in favor of the persons sought to be subjected to their operation. State, ex rel., v. American Savings Stamp Co., 194 Kan. 297, 398 P.2d 1011; State v. Bishop, 215 Kan. 481, 483, 524 P.2d 712. The rule simply means that ordinary words are to be given their ordinary meaning. It does not permit or justify a disregard of manifest legislative intention appearing from plain and unambiguous language. State v. Walden, 208 Kan. 163, 166, 167, 490 P.2d 370." 221 Kan. at 54.

In accord is State v. Logan, 198 Kan. 211 (1967), wherein the Court states: "A penal statute should not be read so as to add that which is not readily found therein, or to read out what, as a matter of ordinary language, is in it." Id. at 213.

With these principles in mind, we have found no basis for disregarding the plain and unambiguous language in 8-1901(c) that prescribes the schedules to be used in calculating fines for violations of vehicular weight limitations. In our opinion, an interpretation of these schedules according to the exact and literal import of the words used therein does not contravene the manifest purpose of the legislature, i.e., to provide for the escalation of fines for such violations in relation to the amount by which said weight limitations are exceeded.

Accordingly, there is no justification for interpreting these schedules in a way that requires a modification of the language thereof.

Very truly yours,

Robert T. Stephan

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Attorney General of Kansas

W. Robert Alderson

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First Deputy Attorney General

RTS:WRA:jm