



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

September 20, 1984

ATTORNEY GENERAL OPINION NO. 84- 92A

David H. Heilman  
Council Grove City Attorney  
200 West Main Street  
Council Grove, Kansas 66846

Re: Automobiles and Other Vehicles--Act Regulating  
Traffic; Equipment of Vehicles--One-Way Glass or  
Glazing on Windows Prohibited

Synopsis: In State v. Rose, 234 Kan. 1044 (1984), the Kansas Supreme Court ruled that K.S.A. 8-1749a (amended by L. 1984, ch. 39, §20, effective January 1, 1985), is not unconstitutionally vague and indefinite under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The court said the term "substantially" means less than totally or the whole, but more than imaginary. The term defines a standard between the extremes of total and complete impairment and slight impairment.

Since the conclusion reached in Attorney General Opinion No. 84-92 is contrary to the decision of the court in State v. Rose, supra, the opinion is withdrawn. Cited herein: K.S.A. 8-1749a, (amended by L. 1984, ch. 39, §20, effective January 1, 1985); U.S. Const., 14th Amendment.

\*

\*

\*

Dear Mr. Heilman:

A few weeks ago you sought our opinion on the meaning of that portion of K.S.A. 8-1749a (amended by L. 1984, ch. 39, §20,

David H. Heilman  
Page Two

effective January 1, 1985) which makes it a crime to equip any motor vehicle required to be registered in this state and operated on the state's highways:

"with one-way glass or any adhesive film or other glaze or application on or in the front windshield, side wings or side windows on either side forward of or adjacent to the operator's seat, which prohibits or substantially impairs the ability to see into such motor vehicle from the outside . . . ."  
(Emphasis added.)

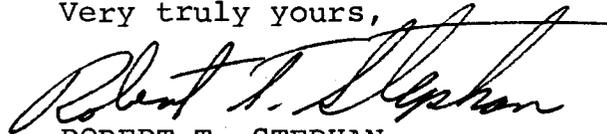
We responded to your inquiry by issuing Attorney General Opinion No. 84-92, in which we concluded the above-emphasized language of 8-1749a was unconstitutionally vague and indefinite under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Our conclusion was based upon the Kansas Supreme Court's decision in State v. Carpenter, 231 Kan. 235 (1982) and the numerous other criminal cases cited in that decision. We also expressed the opinion that the other provisions of the statute were clear and unambiguous and would be upheld, if the the constitutionality of the statute was challenged.

This week our attention has been called to the recent decision of the Kansas Supreme Court in State v. Rose, 234 Kan. 1044 (1984), in which the court held the "substantially impairs" language of K.S.A. 8-1749a was not unconstitutionally vague and indefinite. The court recited the rule that a statute which either requires or forbids the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application is violative of due process. Id. at Syl. ¶1. However, the court held: "'Substantially' is a word of general usage, commonly known and understood by the public, which provides a reasonably definite objective standard by which one reading the statute can understand and contemplate what conduct it is that the act proscribes." Id. at 1049. In addition, the court said: "By definition the term is relative and must be considered within the context of the particular fact situation; in essence it means less than totally or the whole, but more than imaginary." Id. at 1049. Finally, the court stated that the term "substantially" "defines a standard between the extreme of total and complete impairment and slight impairment . . . ." Id. at 1050.

David H. Heilman  
Page Three

Since the opinion expressed in Attorney General Opinion No. 84-92 is contrary to the decision of the supreme court in State v. Rose, supra, Attorney General Opinion No. 84-92 is withdrawn.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Rodney J. Bieker  
Assistant Attorney General

RTS:JSS:RJB:jm