



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION 87- 27

The Honorable Rick Bowden
Representative, 93rd District
Statehouse, Room 281-W
Topeka, Kansas 66612

Re: Automobiles and Other Vehicles -- General Provisions;
Registration of Vehicles -- Requirements for
Acceptance of Registration Application.

Synopsis: As a condition precedent to receipt of a motor vehicle registration, K.S.A. 1986 Supp. 8-173 requires payment of all personal property taxes levied against the registrant for the preceding year. The statute does not on its face or in its application create any classification which could give rise to an equal protection challenge under the Fourteenth Amendment. Accordingly, K.S.A. 1986 Supp. 8-173 is valid under the Fourteenth Amendment to the constitution of the United States. Cited Herein: K.S.A. 1986 Supp. 8-173; U.S. Const., Fourteenth Amend.

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Dear Representative Bowden:

As state representative for the ninety-third district, you request our opinion on the constitutionality of K.S.A. 1986 Supp. 8-173. Specifically, you inform us that individuals in Sedgwick County have been denied the right to register their vehicles with the Sedgwick County Treasurer because they have failed to pay all of their personal property taxes for the previous year, even though they have fully paid the taxes owed on the vehicles they are seeking to register. You inquire whether the county can constitutionally deny an individual motor vehicle tags,

pursuant to K.S.A. 1986 Supp. 8-173, when taxes on said vehicles are paid in full.

K.S.A. 1986 Supp. 8-173, which deals with the registration of vehicles, provides:

"An application for registration of a vehicle as provided in article 1 of chapter 8 of the Kansas Statutes Annotated and amendments thereto, shall not be accepted unless the person making such application shall exhibit:

"(a) A receipt showing that such person has paid all personal property taxes levied against such person for the preceding year, including taxes upon such vehicle, except that if such application is made before June 21 such receipt need show payment of only one-half of the preceding year's tax;" (Emphasis added.)

The constitutionality of this statute was addressed by the Kansas Supreme Court in State v. Raulston, 9 Kan.App.2d 714 (1984). Portions of K.S.A. 1986 Supp. 8-173 which are relevant to this Attorney General opinion have not been amended since the Raulston decision. In Raulston, the specific issue upon which the court focused was whether K.S.A. 8-173 violates the equal protection clause of the Fourteenth Amendment of the United States Constitution, by requiring proof of payment of all personal property taxes levied against a person for the preceding year before that person may register a motor vehicle.

Initially, the court noted that since the statute does not levy a tax or set a rate, it is adjunctive to enforcing the collection of taxes on personal property. As such, the court reviewed the statute as a revenue measure, rather than a regulatory measure designed to promote the general health, safety, welfare or morals of the community.

The defendant in Raulston claimed that K.S.A. 8-173(a) results in inequality because a person owing taxes only on his motor vehicle can receive a vehicle registration by paying the tax on that vehicle, while a person owing taxes on other personal property cannot receive a vehicle registration even through taxes on the motor vehicle have been paid.

In determining whether such inequality actually existed, the Supreme Court reviewed the basic principles which must be applied in determining the constitutionality of a statute, as set forth in City of Baxter Springs v.

Bryant, 226 Kan. 383, Syl. ¶¶1-4 (1979). The court quoted the following from Baxter:

"'The constitutionality of a statute is presumed, all doubts must be resolved in favor of its validity, and before the statute may be stricken down, it must clearly appear the statute violates the constitution.'

"'In determining constitutionality, it is the court's duty to uphold a statute under attack rather than defeat it and, if there is any reasonable way to construe the statute as constitutionally valid, that should be done.'

"'Statutes are not stricken down unless the infringement of the superior law is clear beyond substantial doubt.'

"'The propriety, wisdom, necessity and expedience of legislation are exclusively matters for legislative determination and courts will not invalidate laws otherwise constitutional, because the members of the court do not consider the statute in the public interest of the state, since, necessarily, what the views of members of the court may be upon the subject is wholly immaterial and it is not the province nor the right of courts to determine the wisdom of legislation touching the public interest as that is a legislative function with which courts cannot interfere.'" Raulston, 9 Kan. App. 2d at 716. See State v. Cantrell, 234 Kan. 426, Syl. ¶10 (1983); Sheppard v. Sheppard, 230 Kan. 146, 149 (1981); Leiker v. Employment Security Bd. of Review, 8 Kan.App.2d 379 (1983).

The court, citing the proper test for determining whether a statute offends the equal protection clause of the Fourteenth Amendment as reviewed in State ex rel. Schneider v. Liggett, 223 Kan. 610, 616 (1978), stated:

"'Traditionally, the yardstick for measuring equal protection arguments has been the "reasonable basis" test. The standard was set forth in McGowan v. Maryland, 366 U.S. 420, 425-26, 6 L.Ed.2d 393, 81 S.Ct. 1101 (1961):

"'". . . The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the

fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. . . ." Raulston, 9 Kan. App. 2d at 717, citing Liggett, supra.

See Manhattan Buildings, Inc. v. Hurley, 231 Kan. 20, 30 (1982); Von Ruden v. Miller, 231 Kan. 1 (1982).

Thus, the yardstick for measuring equal protection arguments is the "reasonable basis" test, and this constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective.

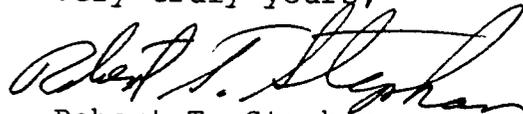
In light of this standard, the Raulston court concluded that K.S.A. 8-173(a) does not on its face or in its application create any classification which could give rise to an equal protection challenge. The court emphasized that the statute requires that each person pay all personal property taxes levied against that person for the preceding year before he or she may receive a vehicle registration for any of his or her vehicles. The statute draws no distinctions between different groups of individuals, and is not discriminatory. Thus, the Supreme Court held that K.S.A. 8-173 does not violate the equal protection clause of the Fourteenth Amendment.

We concur with the Kansas Supreme Court's decision that K.S.A. 8-173 does not offend the equal protection clause of the Fourteenth Amendment, and is, therefore, constitutional. Accordingly, in our opinion, Sedgwick County can constitutionally deny an individual motor vehicle tags pursuant to K.S.A. 1986 Supp. 8-173, even though taxes on vehicles said individual is seeking to register have been paid in full.

In summary, K.S.A. 1986 Supp. 8-173 requires payment of all personal property taxes levied against the registrant for the preceding year as a condition precedent to receipt of a motor vehicle registration. The statute does not on its face or in its application create any classification which could give rise to an equal protection challenge under the Fourteenth Amendment. Accordingly, K.S.A. 1986 Supp. 8-173

is valid under the Fourteenth Amendment to the Constitution
of the United States.

Very truly yours,



Robert T. Stephan
Attorney General



Barbara P. Allen
Assistant Attorney General

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