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ATTORNEY GENERAL OPINION NO. 90- 116

Susan Marshall
Lincoln County Attorney
P.O. Box 389
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Re: Automobiles and Other Vehicles--General Provisions;
 Registration of Vehicles--Residency; Requirement
 That Vehicle Be Garaged

Synopsis: L. 1990, ch. 34, § 1 (1990 House Bill No. 2598), lists several factors to be used in determining the county of residence of persons for automobile registration purposes. Among these indices of residency is a rebuttable presumption that any business entity is a resident of the county in which it operates motor vehicles if such vehicles are "garaged" in that county for a period exceeding 90 days. In order to give full effect to the revision of the registration laws, this provision should be read to require only that vehicles be kept overnight, in any manner, in that county in which residency is claimed, for the requisite period of time. Cited herein: K.S.A. 1989 Supp. 8-129, as amended by L. 1990, ch. 34, § 2; K.S.A. 8-149, as amended by L. 1990, ch. 34, § 3; 79-5106; 79-5107, as amended by L. 1990, ch. 34, § 5; 1990 H.B. No. 2598.

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Dear Ms. Marshall:

As Lincoln county attorney you request our opinion regarding the residency requirements for motor vehicle registration. Specifically, you ask the following questions:

1. What is meant by the requirement that a motor vehicle be "garaged," for at least 90 days, in the county in which a business operates in order to deem its owner a resident of that county for vehicle registration and fee purposes.
2. When a vehicle is improperly registered in the wrong county, what steps, if any, may be taken to remedy the situation.

The motor vehicle registration laws were substantially amended in the 1990 session of the Kansas legislature. In particular, several new provisions were added to establish guidelines for determining the county of residence of persons and businesses for vehicle registration purposes. This action was taken in response to a finding that the existing law (K.S.A. 1989 Supp. 8-129), which did not define residency, resulted in significant amounts of lost revenue to state and local government due to improperly registered vehicles. See Proposal No. 54, Report of Kansas Legislative Interim Studies to the 1990 Legislature at 721. The primary problem, as expressed in testimony to the special committee on judiciary, was due to Kansas residents in "border" communities registering the vehicles in neighboring states in order to avoid higher Kansas personal property taxes. Id.

1990 House Bill No. 2598, § 1 provides in part:

"(b) For purposes of article 1 of chapter 8 of the Kansas Statutes Annotated, there is a rebuttable presumption that a person is a resident of a county in this state if any of the following exist:

...

"(4) any individual, partnership, company, firm, corporation or association maintains a main or branch office or warehouse facility within such county or bases and operates motor vehicles in such county, if such motor vehicles are

garaged in such county for a period exceeding 90 days; or

"(5) any individual, partnership, company, firm, corporation or association operates motor vehicles in intrastate haulage in this state, if such motor vehicles are garaged in such county for a period exceeding 90 days."
(Emphasis added).

Similarly, K.S.A. 1989 Supp. 8-129, as amended by L. 1990, ch. 34, § 2, provides that vehicles shall be registered: (1) in the county in which the owner resides; or (2) [in] the county in which the owner has a bona fide place of business, if such vehicle is "garaged" in such county for a period exceeding 90 days.

You seek our interpretation of the term "garaged." Unfortunately, the legislature failed to provide a statutory definition. The term is generally defined as "to put in or bring to a garage"; i.e. to store in a building used to park cars. See The American Heritage Dictionary 543 (new college ed. 1976). However, at least one court has held that the term "garaged" as used in an automobile theft policy did not require that the vehicle be parked in a building since there was no provision for storing the vehicle in a particular place. The policy was interpreted to merely require keeping the vehicle in a particular geographic area, and it made no difference that it was parked in an open lot. Lukin v. Nat'l Fire & Marine Inc. Co., 42 N.Y.S.2d 237, 239 (1943).

With two possible interpretations available, we look to legislative intent using the rules of statutory construction. "The fundamental rule [of statutory construction], to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute. In construing statutes the legislative intention is to be determined from a general consideration of the entire act. Effect must be given, if possible, to the entire act and every part thereof." In re Estate of Estes, 239 Kan. 192, 194-195 (1986), accord see State v. Thompson, 237 Kan. 562, 563 (1985). "In determining legislative intent, courts are not limited to a mere consideration of the language employed but may properly look to . . . the purposes to be accomplished and the effect the statute may have under the various constructions

suggested." In re Estate of Estes, supra; see also State v. Keeley, 236 Kan. 555, 559 (1985).

As discussed above, the primary purpose behind clarifying who is deemed a "resident" for vehicle registration purposes was to lessen the problem of vehicles being registered in other states in avoidance of Kansas personal property taxes. A second purpose was to assist in determining the county in which a vehicle should be registered, that being the county in which the vehicle has a legitimate situs. See Minutes of the Senate Committee on Transportation and Utilities, March 23, 1990. In light of these aims, we believe the legislature intended to classify as residents those owners that keep their vehicles within the state or a particular county for a significant period of time. In our opinion, this would include vehicles kept overnight in any manner. We do not believe the legislature intended to distinguish vehicles that are literally "garaged" (e.g. stored in a structure) from those that are parked in a lot. There is no apparent reason for such a distinction, and we believe reading the statute to require this distinction would lead to an unintended result. In our opinion, the term was intended to distinguish between vehicles based in a particular county for at least 90 days (indicating some degree of permanency) and those which are merely used to transport an individual between his or her place of employment and residence (indicating more transiency).

Next you ask what can be done if a vehicle is found to be registered in the wrong county. The motor vehicle registration laws provide no express procedure to remedy this situation. K.S.A. 1990 Supp. 79-5107, as amended by L. 1990, ch. 34, § 5, provides for imposition and refund of taxes on vehicles moved from state to state. Subsection (d) requires that any person who has paid his annual registration taxes and subsequently establishes residence in another state during that year be entitled to a refund. The refund is calculated by multiplying 1/12 of the tax paid for the registration year by the number of full calendar months remaining in the registration year. The same method is used to impose taxes on vehicles brought into the state. Additionally, K.S.A. 79-5106(b) states:

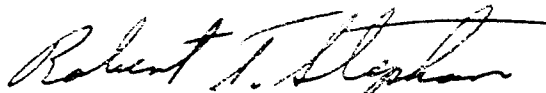
"If the tax situs of any motor vehicle at the time of registration is in a different county from that indicated on the application form, the amount of tax due upon such motor vehicle under the provisions of this act as indicated by

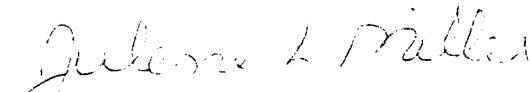
such form shall be recomputed and shall be the amount determined for such vehicle in such county pursuant to K.S.A. 79-5105, and amendments thereto, and shall be paid to the county in which the motor vehicle is to be registered."

While this statute addresses the issue at the front end, it does not indicate a method for correcting an improper registration once it is completed. In addition, although K.S.A. 1989 Supp. 8-149 provides penalties for improper registration, there is no statutory authorization empowering the county treasurer to correct an improper registration. Thus it appears that legislation maybe needed to devise a procedure to remedy such problems.

In conclusion, the residency factors listed in L. 1990, ch. 34, § 1 should be viewed in light of the legislative intent behind the reform of the vehicle registration laws. The purpose behind the law is to tighten the loopholes that have allowed many Kansas residents to avoid paying their fair share of personal property taxes. To give full effect to his valid legislative concern, the term "garaged" should be read to include any vehicle kept overnight in the county for the requisite period of time, rather than just those parked in a building or structure.

Very truly yours,


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