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January 24, 2012

ATTORNEY GENERAL OPINION NO. 2012- 4

John D. Gatz, City Attorney
City of Colby
P.O. Box 346
Colby, Kansas 67701

Re: Unfair Trade and Consumer Protection—Consumer Protection—Scrap Metal Dealers—Unlawful Acts; Registered Place of Business; Notice of Filed Registration; Verification of Registration; Fees; Acceptance and Renewal; Registration Not Transferable; Criminal Penalties; Applicability

Synopsis: The renewal registration fee for a scrap metal dealer is only required after the ten-year registration period has elapsed. The renewal registration requires the payment of both the registration fee and the renewal registration fee at the time of renewal. Cited herein: K.S.A. 2011 Supp. 50-6,112a.

* * *

Dear Mr. Gatz:

As the City Attorney for the City of Colby, you ask for our opinion on questions regarding regulated scrap metal dealers registration. Specifically, you ask whether the renewal registration fee authorized by K.S.A. 2011 Supp. 50-6,112a is only required after the ten-year registration elapses or whether such fee must be paid periodically, i.e., on an annual basis. Your other question is whether the renewal registration requires the payment of both the registration fee and the renewal registration fee at the time of renewal.

The statutory language in question regarding both of your questions is found in K.S.A. 2011 Supp. 50-6,112a(e), (f) and (g). It provides as follows:

(e) Each registration for a scrap metal dealer to purchase regulated scrap metal shall be accompanied by a fee of not less than \$100 nor more than

\$400, as prescribed by the board of county commissioners or the governing body of the city, as the case may be.

(f) The board of county commissioners or the governing body of a city shall accept a registration for a scrap metal dealer as otherwise provided for herein, from any scrap metal dealer engaged in business in such county or city and qualified to file such registration, to purchase regulated scrap metals. Such registration shall be issued for a period of 10 years.

(g) If an original registration is accepted, the governing body of the city or the board of county commissioners shall grant and issue renewals thereof upon application of the registration holder, if the registration holder is qualified to receive the same and the registration has not been revoked as provided by law. The registration fee for such renewal, which shall be in addition to the fee provided by subsection (e), shall be not less than \$25 nor more than \$50.

When the Renewal Fee May be Collected

Your question about whether the renewal registration fee is only required after the ten-year registration elapses or whether such fee must be paid periodically, i.e., on an annual basis, requires a determination of legislative intent. In determining legislative intent:

"A fundamental rule of statutory construction, to which all other rules are subordinate, is that the intent of the legislature governs if that intent can be ascertained. When a statute is plain and unambiguous, appellate courts will neither speculate as to legislative intent nor read a statute so as to add something not readily found in it. The legislature is presumed to have expressed its intent through the language of the statutory scheme it enacted. Legislative intent may best be determined from the plain meaning of the words used in the statute in light of all the experience available to the law-making body. *Our construction should neither add to that which is not readily found in the statute, nor read out what, as a matter of ordinary language, is in it.*¹

"In addition, there are many cases which indicate that when the language of a statute is plain and unambiguous, we are to give effect to the intention of the legislature as shown by that language rather than to determine what the law should or should not be. Indeed, before we can even undertake the task of construing and interpreting a statute, we must conclude the statute is ambiguous. If it is not ambiguous, we must take the language of the statute to mean what it says, and no construction is necessary."²

The language of the statute establishes each registration shall be accompanied by a fee of not less than \$100 nor more than \$400 as determined by the local governing body³ and the

¹ See *In re Marriage of Killman*, 264 Kan. 33, 42-43 (1998). Emphasis added.

² *State v. Gunn*, 29 Kan.App.2d 337, 349 (2001) (internal citations omitted).

³ K.S.A. 2011 Supp. 50-6,112a(e).

registration shall be issued for ten years.⁴ Based upon the plain reading of the statute, we conclude that a scrap metal dealer who has a valid registration would not have to renew such registration until after the expiration of the ten years, therefore the renewal registration fee required by (g) is only required after the ten years have elapsed.

There is no language in the statute that requires a periodic or annual renewal registration for scrap metal dealers. Therefore, we do not read into the statute a requirement that the renewal registration needs to be annually obtained.⁵ Because there is no language in the law requiring annual renewal, the renewal registration period is the same as the original registration period of ten years.

Amount to be Collected Upon Renewal

Your final question is whether the renewal registration requires the payment of both the registration fee and the renewal registration fee at the time of renewal. K.S.A. 2011 Supp. 50-6,112a(g) provides:

...The registration fee for such renewal, *which shall be in addition to the fee provided by subsection (e)*, shall be not less than \$25 nor more than \$50.⁶

The fee provided by subsection (e) is a registration fee of not less than \$100 nor more than \$400. The statute specifically provides that *each* registration shall be accompanied by this fee.⁷ Based upon the plain reading of the statute and giving effect to the language found in the statute, we conclude that the renewal registration for a scrap metal dealer requires the payment of both the registration fee and the renewal registration fee at the time of renewal.

Sincerely,

Derek Schmidt
Attorney General

Athena Andaya
Deputy Attorney General

⁴K.S.A. 2011 Supp. 50-6,112a(f).

⁵We note that in 2011 House Bill No. 2312, as introduced, (g) did require an “annual license fee for such license...” The removal of the word “annual” through the legislative process is arguably significant because of the general presumption that when the Legislature alters the words of a *statute*, it must intend to change the statute’s meaning, and it is presumed the legislature does not intend to enact useless or meaningless legislation. See *generally, State v. Van Hoet*, 277 Kan. 815, 826 (2004).

⁶Emphasis added.

⁷Emphasis added.

John Gatz
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