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May 26, 2021

ATTORNEY GENERAL OPINION NO. 2021- 1

The Honorable Jeff Longbine
State Senator, 17th District
2801 Lakeridge Rd.
Emporia, KS 66801

Re: Unfair Trade and Consumer Protection—Consumer Protection; Scrap Metal Dealers—Scrap Metal Theft Reduction Act; Definitions; Implementation; Administration and Enforcement By the Attorney General and Kansas Bureau of Investigation; Unlawful Acts; Person Selling Regulated Scrap Metal; Information Required; Catalytic Converters

Synopsis: A scrap metal dealer registered under the Scrap Metal Theft Reduction Act is required to submit information required by the Kansas Bureau of Investigation for each transaction. Such regulated scrap metal includes catalytic converters, as their primary value is derived from stainless steel and the platinum, palladium or rhodium contained in the core. Cited herein: K.S.A. 2020 Supp. 50-6,109; 50-6,110; L. 2007, ch. 128, § 1.

* * *

Dear Senator Longbine:

As State Senator for the 17th District, you request our opinion on whether automotive catalytic converters are covered under the Scrap Metal Theft Reduction Act.¹ Specifically, you ask whether regulated scrap metal as defined in K.S.A. 2020 Supp. 50-6,109(b) includes automotive catalytic converters, and whether scrap metal dealers

¹ K.S.A. 2020 Supp. 50-6,109 *et seq.*

are required to report the purchase of catalytic converters to the Kansas Bureau of Investigation database.

General Motors decided to utilize catalytic converters in its vehicles starting in 1973,² and the automobile industry has utilized catalytic converters as a component of vehicle exhaust systems as a way to reduce air pollution since 1975.³ It is widely understood in the automotive and scrap metal industries that the interior lining of catalytic converters is composed of platinum, palladium, and/or rhodium. Nickel is also used in some applications.⁴ “Catalytic converter recycling plays a significant part in the effort to feed the constant demand for platinum from the automotive and other transportation industries that make these devices.”⁵ “Other exotic and precious metals come from a variety of sources such as ... Platinum-group metals from catalysts (including catalytic converters, which automobile recyclers systematically collect).”⁶ It is clear that catalytic converters are purchased primarily for the value of their constituent parts that contain platinum, palladium and rhodium.

Many states, including Alabama, Alaska, Arizona, Missouri, and North Carolina⁷ specifically reference catalytic converters in their scrap metal statutes. When originally enacted, the Kansas Scrap Metal Theft Reduction Act specifically mentioned catalytic converters in the statutory definition of regulated scrap metal;⁸ however, in 2014, in response to a request by a legislator, the Judicial Council agreed to study 2014 Senate Bill 418 regarding regulated scrap metal, the growing problem of scrap metal theft, and to make recommendations. One of the recommendations mentioned in the Judicial Council’s report was to simplify and broaden the definitions of scrap metal dealer and regulated scrap metal.⁹ The 2015 Legislature responded by broadening the statutory regulated scrap metal definition so platinum, palladium and rhodium in any form were considered regulated scrap metal, and not just when they are a part of a catalytic converter.

Pursuant to the Scrap Metal Theft Reduction Act, scrap metal dealers are required to be registered with the State of Kansas, maintain a register that includes certain

² G.P. Thomas, *What Materials are Used in Catalytic Converters?* (May 1, 2013) <https://www.azom.com/article.aspx?ArticleID=8094> (last accessed May 10, 2021).

³ *Timeline of Major Accomplishment in Transportation, Air Pollution, and Climate Change.* <https://www.epa.gov/transportation-air-pollution-and-climate-change/timeline-major-accomplishments-transportation-air> (last accessed May 10, 2021).

⁴ <https://www.catalyticconverters.com/construction/> (last accessed May 10, 2021).

⁵ Lessard, Mark, *The Connection Between Scrap Metal Recycling and Drug Abuse.* ThermoFisher Scientific. (March 31, 2020) <https://www.thermofisher.com/blog/metals/the-connection-between-scrap-metal-recycling-and-drug-abuse/> (last accessed May 10, 2021).

⁶ *Guidance for the Identification and Control of Safety and Health Hazards in Metal Scrap Recycling.* OSHA 3348-05 2008.

⁷ Ala. Code §13A-8-13.1; AS §44-1642.01; A.R.S. §44-1642.01; RSMo §407.303; N.C.G.S. §66-421(b)

⁸ See L. 2007, ch. 128, § 1.

⁹ <https://kansasjudicialcouncil.org/Documents/Studies%20and%20Reports/2015%20Reports/Scrap%20Metal%20Report%20WITH%20attachments.pdf> (last accessed May 10, 2021).

information about the purchase of regulated scrap metal, and report such purchases to the Kansas Bureau of Investigation Reporting System within 72 hours.¹⁰

K.S.A. 2020 Supp. 50-6,109(b)(2) defines regulated scrap metal as:

[A]ny item, in any form, for which the purchase price described in K.S.A. 2020 Supp. 50-6,110 and 50-6,111, and amendments thereto, was primarily based on the content of:

....

(E) stainless steel;

....

(J) platinum;

(K) palladium;

(L) rhodium;

(O) any other nonferrous metal; or

(P) any combination of nonferrous metals listed in subsections (b)(2)(A) through (b)(2)(P).

To fully answer your question as to whether catalytic converters are covered by the definition of regulated scrap metal, we turn to the rules of statutory interpretation. Only if the statute's language or text is unclear or ambiguous does the court use canons of construction or legislative history or other background considerations to construe the legislature's intent.¹¹ We note that the Act formerly included catalytic converters in the list of regulated scrap metal. Although in some instances, deletion of a term in a statute indicates a legislative intent to exclude it from the scope of the statute, that is not the case here.

The statutory language is clear. Catalytic converters are primarily purchased by scrap metal dealers for the value of the regulated scrap metals, platinum, palladium, and rhodium contained in them. These metals are listed in K.S.A. 50-6,109(b), and, accordingly, the Scrap Metal Theft Reduction Act requires scrap metal dealers to report

¹⁰ K.S.A. 2020 Supp. 50-6,110(b) and (e).

¹¹ *City of Dodge City v. Webb*, 305 Kan. 351, 356 (2016).

the information related to each catalytic converter purchase to the Kansas Bureau of Investigation database.

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Kansas Attorney General

/s/Charles Macheers

Charles Macheers
Assistant Attorney General

DS:SS:CWM:sb