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STATE OF NEBRASKA
OFFICIAL
JUL 3 1991
DEPT. OF JUSTICE

DATE: July 1, 1991

SUBJECT: Motor Vehicle Window Tinting, Neb.Rev.Stat. §§39-6,136.01 to 39-6,136.05

REQUESTED BY: Senator Owen Elmer

WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

You have requested an Attorney General's Opinion on whether it is legally permissible under Nebraska law to place 35% tinting material on certain automobile windows. The answer to your question is yes, as discussed below.

Nebraska law provides:

> (1) It shall be unlawful for a person to drive a motor vehicle required to be registered in this state upon a highway (a) If the windows in such motor vehicle are tinted so that the driver's clear view through the windshield or side or rear windows is reduced or the ability to see into the motor vehicle is substantially impaired; . . . (c) If the front side windows have any sunscreening or other transparent <u>material</u> that has a luminous reflectance of more than thirty-five percent or has light transmission of less than thirty-five percent; (d) If the rear window or side windows behind the front seat have sunscreening or other transparent <u>material</u> that has a luminous reflectance of more than thirty-five percent or has light transmission of less than twenty percent except for the rear window or side windows behind the front seat on a multipurpose vehicle, van, or bus. . . . [2] (d) Light transmission shall mean the ratio of

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> the amount of total light, expressed in percentages, which is allowed to pass through the sunscreening or transparent material to the amount of total light falling on the motor vehicle window; (e) Luminous reflectance shall mean the ratio of the amount of total light, expressed in percentages, which is reflected outward by the sunscreening or transparent material to the amount of total light falling on the motor vehicle window. . .

Neb.Rev.Stat. §39-6,136.01 (1990 Cum.Supp.) (emphasis added).

The language of §39-6,136.01 is clear and unambiguous. The 35% luminous reflectance and light transmission standard clearly applies to the sunscreening or other transparent material and not to the window after treatment. Compare Kan.Stat.Ann. §8-1749a (1990 Cum.Supp.) (statute focuses on the results obtained after application rather than on the material used).

Notwithstanding the fact that resort to legislative history is unnecessary here, given the clear language of the statute, the legislative history also indicates the legislature intended to allow the use of 35% tinting material. The record of testimony before the Committee on Transportation on January 31, 1989 regarding LB 155, Ninety-first Legislature, First Session, shows that the committee viewed a sample 35% tinting film material. Id. at 34. A Lincoln police officer stated "our main concern is, basically, officer safety and the safety of the motoring public. I think you've seen the examples of the 35 percent and we feel that we can live with that." Id. at 41.

In committee discussion, Senator Goodrich stated "I want to make sure I understand what you're saying when you say . . . 35 percent. . . ." The response of the witness, a manufacturer's representative, was not entirely clear but stated "driver and passenger [windows] should be a 35 percent light transmission product." Id. at 43 (emphasis added).

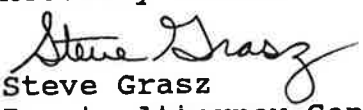
Thus, we conclude 35% tinting material is permissible under §39-6,136.01(1)(c),(d),(e). We would call your attention, however, to §39-6,136.01(1)(a) which prohibits operation of motor vehicles "If the windows in such motor vehicle are tinted so that the driver's clear view through the windshield or side or rear windows is reduced or the ability to see into the motor vehicle is substantially impaired;" (emphasis added). While no Nebraska court has interpreted this statute, the Kansas Supreme Court held that a similar provision was not unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment. State v. Rose, 234 Kan. 1044, 677 P.2d 1011 (1984). The Nebraska statute appears to permit use of 35% tinting material on certain windows while at the

same time prohibiting tinting which "substantially impairs" vision in or out of the windows. Therefore, while the use of 35% tinting material is generally legal, if under the particular circumstances the ability to see into the motor vehicle is "substantially impaired," the vehicle may be in violation of state law.

Although the two provisions of the statute may seem to be in conflict, this is not a situation where a specific statute controls over a more general statute. The provisions are part of the same statute and must be read together in such a manner that both provisions are given effect. "The court will, if possible, give effect to every word, clause, and sentence of a statute . . . since the Legislature is presumed to have intended every provision of a statute to have a meaning. Iske v. Papio Nat. Resources Dist., 218 Neb. 39, 41, 352 N.W.2d 172, 174 (1984). Thus, while 35% tinting material is generally legal, if under the circumstances the ability to see in or out of the vehicle is "substantially impaired" the operator could be charged with a violation of Neb.Rev.Stat. §39-6,136.01 as provided in §39-6,136.02 These statutory provisions should be interpreted in light of the primary purpose of the statute: protecting law enforcement officers as they approach vehicles. See Introducer's Statement of Intent, LB 155, Ninety-first Legislature, First Session.

Sincerely yours,

DON STENBERG
Attorney General



Steve Grasz
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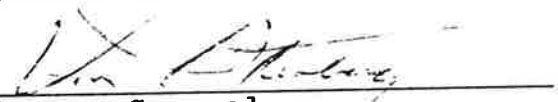

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