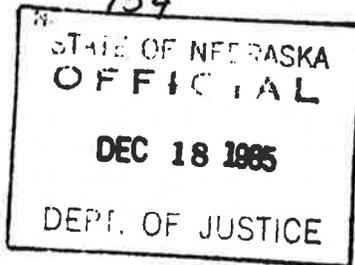


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General



December 12, 1985

SUBJECT: Legality of Tinted or Smoke-Colored Automobile Glass

REQUESTED BY: Thomas E. Brown  
Deputy Douglas County Attorney

OPINION BY: Robert M. Spire  
Attorney General

Jill Gradwohl  
Assistant Attorney General

QUESTION: Is dark tinted or smoke-colored automobile glass a "nontransparent material" prohibited by Neb.Rev.Stat. §39-6,139?

CONCLUSION: No.

You have requested an opinion from our office regarding citation of drivers whose automobiles have dark tinted or smoke-colored glass. For purposes of this opinion, we assume that the dark tinted or smoke-colored windows are factory installed. The relevant statute is Neb.Rev.Stat. §39-6,136 (Reissue 1984) which states at subsection (a):

It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster or other nontransparent material upon the front windshield, side wings, side or rear windows of such motor vehicle other than a certificate or other paper required to be so displayed by law.

No Nebraska decision has addressed the specific issue involved here. Also, a review of the legislative history of the statute and its amendments is of little assistance in determining

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whether dark tinted or smoke-colored glass falls within the meaning of §39-6,136.

In State v. Myers, 8 Ohio St.3d 33, 456 N.W.2d 1207 (1983), a defendant driving a vehicle equipped with darkly tinted windows was arrested pursuant to an Ohio statute with virtually identical language to §39-6,136. On appeal, the Ohio Supreme Court held that the term "other nontransparent material" as used in the statute did not include darkly tinted automobile windows. The state had argued that because the darkly tinted windows prevented a view inside the vehicle "unless extremely close," the glass was "nontransparent." The court recognized the law enforcement interest in safety but stated in the course of its opinion:

While we are mindful that darkly tinted windows may pose a safety hazard for approaching police officers, we are unwilling to transform what is obviously a highway safety statute concerned with driver visibility into a police protection statute.

456 N.E.2d at 1208.

Other jurisdictions have held statutes governing tinted windows constitutional. See, Klarfield, et al. v. State of California, 142 Ca.App.3d 541, 191 Cal.Rptr. 330 (1983); State v. Rose, 234 Kan. 1044, 677 P.2d 1011 (1984). However, the statutes involved in such cases dealt directly with tinted glass and did not contain the "nontransparent material" language contained in §39-6,136.

You also ask whether the "safety" factor of tinted glass has ever been litigated. Safety specifications for factory-installed tinted glass are contained in 49 C.F.R. 571.101 through 571.302. The stated purpose of such regulations is "to ensure a necessary degree of transparency in motor vehicle windows for driver visibility." However, we are aware of no cases in which the safety of a driver with tinted glass windows has been litigated, or in which the issue of glare to following or approaching vehicles has been addressed.

Sincerely,

ROBERT M. SPIRE  
Attorney General

  
Jill Gradwohl  
Assistant Attorney General

JG:bmh  
APPROVED:

  
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