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ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD



**January 7, 1976**

**FILE NO. S-1030**

**MOTOR VEHICLES:  
Validity of  
Public Act 79-747**

**Honorable Michael J. Howlett  
Secretary of State  
State of Illinois  
Springfield, Illinois 62706**

**Dear Secretary Howlett:**

This responds to your request for an opinion as to the validity of Public Act 79-747 which added section 5-104 to The Vehicle Code. (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 5-104, as amended.) The added section provides as follows:

"Sec. 5-104. (a) On and after January 1, 1976, each manufacturer of a 1976 or later model year vehicle of the first division manufactured for sale in this State, other than a motorcycle, shall clearly and conspicuously indicate, on the price listing affixed to the vehicle pursuant to the 'Automobile Information Disclosure Act', (15 United States Code 1231 through 1233), the

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following, with the appropriate gasoline mileage figure:

'In tests for fuel economy in city and highway driving conducted by the United States Environmental Protection Agency, this passenger vehicle obtained ..... miles per gallon of gasoline.'

As is discussed in the attachment to your opinion request, there are several areas where the statute is unclear.

First, does the phrase "this passenger vehicle" mean the individual vehicle to which the label is affixed, or does it refer to a particular model of motor vehicle? Unless it refers to the latter, manufacturers could not comply. The United States Environmental Protection Agency does not test every individual motor vehicle. Fuel economy values are established only for each car line/engine/transmission combination. These fuel economy values are sales weighted by car line based on vehicle weight.

Secondly, does the Act require that a single fuel economy figure is to be used? EPA tests do not compute a single mileage figure. Rather, two are computed: one based on city driving and one based on highway driving. That the General Assembly was aware of this appears in the Act in that it refers to "tests for fuel economy in city and highway driving".

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Thirdly, must all first division motor vehicles carry a fuel economy label? First division motor vehicles are defined in paragraphs 1-146 and 1-217 of The Illinois Vehicle Code (Ill. Rev. Stat. 1973, ch. 95 1/2, pars. 1-146 and 1-217) as those designed for carrying not more than ten persons. The EPA only tests light duty vehicles and has no provision for testing vehicles in excess of 6,000 pounds. It is therefore possible that there are vehicles of the first division which EPA does not test. If EPA does not test such vehicles, it is clearly impossible for the manufacturer to disclose fuel economy for these cars.

Fourthly, what is meant by the requirement that the fuel economy label be placed "on the price listing"? Under the EPA program manufacturers may place the fuel economy information either on the price listing itself or on a separate label. Would placing the information on a separate label comply with the Act?

There is a strong presumption in favor of the validity of enactments of the legislature and that if language is susceptible to more than one construction, the statute should receive the construction that will effect its purpose rather

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than defeat it. (Scotfield v. Board of Education, 411 Ill. 11, 15.) The primary rule in the interpretation and construction of statutes is that the intention of the legislature should be ascertained and given effect. Once the legislative intent is ascertained "where there is want of harmony between the whole act and the language of some particular clause, sentence or phrase, such inconsistent words may be modified, changed or rejected in order to arrive at a construction conforming to the legislative aim or intent". (Certain Taxpayers v. Sheahan, 45 Ill. 2d 75, 83.) Even though this is a penal statute (Ill. Rev. Stat. 1973, ch. 95 1/2, par. 5-801) and it is the general rule that penal statutes are strictly construed, "the meaning of a penal statute should not be distorted by such a narrow construction as to defeat its purpose". (Acme Fireworks Corp. v. Bibb, 6 Ill. 2d 112, 120.) Therefore, the problem presented by this statute is not whether it is valid, but whether it can be given a construction which will sustain its validity.

Regardless of the ambiguities in the Act, it is clear that the General Assembly was aware that the United States

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Environmental Protection Agency conducts tests to determine the fuel economy of the various models of automobiles and that the labeling requirement is linked to, and was adopted only because of, those tests. Since it is assumed that the General Assembly is aware of all existing conditions and relevant facts (Lyon & Sons Co. v. Revenue Dept., 23 Ill. 2d 180), it is a valid assumption that the General Assembly was aware that the United States Environmental Protection Agency and the Federal Energy Administration are administering a voluntary fuel economy labeling program. Under this program manufacturers of automobiles voluntarily agree to disclose through a label placed on each individual automobile, the potential gas mileage which the buyer may expect to get with a particular car.

I am of the opinion that it was the intent of the General Assembly to make such program mandatory rather than voluntary. Any other interpretation would render the Act void.

I note that under sections 2-101 and 2-104 of The Illinois Vehicle Code (Ill. Rev. Stat. 1973, ch. 95 1/2, pars. 2-101 and 2-104) that you have the duty to administer the provision under discussion, and the power to make rules and

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regulations as may be necessary in the public interest to carry out the provisions of the Act. You are, therefore authorized to promulgate such rules as may be necessary to interpret the Act and carry the intention of the General Assembly into effect.

In promulgating such rules you should resolve the ambiguities and make the legislative intention as discussed above effective. The fuel economy values to be used are those established by the Environmental Protection Agency for each car line/engine/transmission combination. The manufacturer should disclose the results of both the test for city driving and highway driving. The Act does not require the use of only one figure. Thirdly, the Act does not require that all motor vehicles of the first division be labeled, but only those of the first division for which tests have been conducted.

The fourth problem was the requirement that the fuel economy label be placed "on the price listing". This requirement is stricter than the EPA/FEA voluntary program. The Federal voluntary program permits a separate label which does not have to be posted near the price listing.

The word "on" has a variety of meanings (Webster's

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Third New International Dictionary) and can be used to indicate a position near a specified part of something. The purpose of the requirement that the fuel economy label be placed on the price listing is to draw it to the attention of the buyer. Therefore, the separate label will comply with the Act if that label is placed adjacent to the price listing so that it is conspicuous to a person looking at the price listing.

The attachment to your request points out that the EPA test results are usually not available until some time after new models go on sale. It is contended that it would be impossible to sell cars in Illinois until the tests have been completed and that the sale of new cars in Illinois would therefore be delayed. While such a delay may obstruct interstate commerce and might raise questions of the Act's validity, January 1, 1976, is not the beginning of a new model year and the problem presented does not therefore arise.

This opinion does not consider or pass upon the effect, if any, of the Energy Policy and Conservation Act (P.L. 94-163) approved by the President on December 22, 1975.

Very truly yours,

A T T O R N E Y   G E N E R A L