I Can See Clearly Now "the" … Wait What You Need to be More Clear [*State v. Gensler*, 423 P.3d 488, 490 (Kan. 2018).]

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I. INTRODUCTION

When a court interprets a statute, its goal is to ascertain the legislature's intended meaning behind the statutory language.[1] It is an established principle that courts will give ordinary terms their ordinary meaning and will not speculate as to what the meaning of the statute ought to be.[2] Thus, a court will not utilize tools of statutory interpretation unless the language is ambiguous.[3]

The Kansas Supreme Court attempted to employ this principle in *State v. Gensler*,[4] when the court interpreted the Kansas DUI statute, section 8-1567 of the Kansas Statutes ("K.S.A.").[5] The Kansas Supreme Court was interpreting the statute because there was a disagreement among judges in the Kansas Court of Appeals concerning subsection 8-1567(i)(1).[6] Particularly, the court was considering whether a conviction under a DUI

1. Barnhart v. Sigmon Coal Co., 534 U.S. 438, 450 (2002); State v. Comprehensive Health of Planned Parenthood of Kan. and Mid-Missouri, Inc., 241 P.3d 45, 69 (Kan. 2010).

2. *Barnhart*, 534 U.S. at 450. In *Barnhart*, the court unequivocally states, "[a]s in all statutory construction cases, we begin with the language of the statute." *Id.* The court states the first step is always to determine whether the language is ambiguous, and if the language is unambiguous, the court's work is complete. *Id.* In this case, the court found the language to be unambiguous, and thus, followed the clear meaning of the statute. *Id.*; *see also* Redd v. Kansas Truck Ctr., 239 P.3d 66, 75 (Kan. 2010).

3. *Barnhart*, 534 U.S. at 450; State v. Fredrick, 251 P.3d 48, 52 (Kan. 2011). Further, the Kansas Supreme Court has stated that if the statutory language is clear and unambiguous, the court will follow the clear meaning of the statute and will not resort to canons of construction. *See, e.g.*, *Fredrick*, 251 P.3d at 52; State v. Arnett, 223 P.3d 780, 784 (Kan. 2010).

4. 423 P.3d 488, 490 (Kan. 2018).

5. *State v. Gensler*, 423 P.3d 488, 490 (Kan. 2018); KAN. STAT. ANN. § 8-1567 (Supp. 2017).

6. *See* State v. Williams, 416 P.3d 1024, 1028 (Kan. Ct. App. 2018) (holding a conviction under a DUI ordinance that was broader than section 8-1567 would not count as a prior conviction and would not enhance a defendant's sentence); *contra* State v. Gensler, 369 P.3d 342, *11–12 (Kan. Ct. App. 2016) (unpublished) (holding section 8-1567 was a divisible statute, and thus, a sentencing judge could perform a limited factual inquiry to determine whether a previous conviction was based upon conduct that section 8-1567 criminalized).

ordinance that criminalized a broader range of conduct than section 8-1567 would qualify as a sentence enhancement.[7]

The Kansas Supreme Court sought to resolve this conflict because whether a prior conviction qualifies as a sentence enhancement under section 8-1567 will have a serious effect on the length of a defendant's sentence.[8] If a defendant has no prior DUI convictions, he will be found guilty of a class B misdemeanor.[9] A defendant with one prior DUI conviction will be found guilty of a class A misdemeanor.[10] A defendant with three or more DUI convictions could be found guilty of a felony.[11] Section 8-1567(i)(1) states:

> (i) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:
>
> (1) Convictions for a violation of . . . an ordinance . . . *that prohibits* ***the*** *acts that this section prohibits* . . . shall be taken into account.[12]

The court found this language to be unclear and held that the legislature's use of the word "the" was ambiguous.[13] The court stated multiple meanings behind the word "the" were "plausible," making the statute ambiguous.[14] Thus, the court went on to use several tools of statutory interpretation to ascertain the meaning behind section 8-1567(i)(1).[15]

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7. *See Williams*, 416 P.3d at 1028. Most panels within the Kansas Court of Appeals held that ordinances that were broader than section 8-1567 could not qualify as sentence enhancements. *See Williams*, 416 P.3d at 1028; *see also* State v. Lamone, 399 P.3d 235, 241 (Kan. Ct. App. 2017). However, the court in *Gensler* held that prior convictions under DUI ordinances that were broader than section 8-1567 could count as prior convictions. *See Gensler*, 369 P.3d at *11–12. Yet, these previous cases were usually decided on constitutional grounds, where the court would attempt to determine whether section 8-1567 was a divisible statute. *See Williams*, 416 P.3d at 1028; *Lamone*, 399 P.3d at 241; State v. Fisher, 394 P.3d 157, *7–8 (Kan. Ct. App. 2017) (unpublished); *Gensler*, 369 P.3d at *11–12. The Kansas Supreme Court avoided any constitutional issues and focused instead on interpreting the text of the DUI statute. *See Gensler*, 423 P.3d at 490.

8. *See* KAN. STAT. ANN. § 8-1567(b)(1)(A)–(E) (Supp. 2017).

9. *Id.* A defendant's first DUI conviction is considered a class B misdemeanor; the defendant must serve forty-eight hours in jail, may serve up to six months in jail, and must pay a $750 fine. *Id.* § 8-1567(b)(1)(A).

10. *Id.* § 8-1567(b)(1)(B). A defendant's second DUI conviction is considered a class A misdemeanor; he must serve at least five days in jail, can be sentenced to up to one year in jail, and must pay a $1,250 fine. *Id.*

11. *Id.* A defendant's third DUI conviction is considered a non-person felony if he has had a DUI conviction within the last ten years. *Id.*. If this is the case, the defendant will not be eligible for parole or probation until he has been incarcerated for at least ninety days, and the court must assess at least an $1,750 fine. *Id.*

12. *Id.* § 8-1567(i)(1) (emphasis added).

13. *Gensler*, 423 P.3d at 493.

14. *Id.* However, as examined more fully later on in this Comment, plausibility is the incorrect standard to determine whether statutory language is ambiguous or not. *See infra* Part V.

15. *See Gensler*, 423 P.3d at 493. Tools of statutory interpretation are extremely important in order to determine the legislature's intended meaning when that language is unclear or ambiguous. *See* Redd v. Kansas Truck Ctr., 239 P.3d 66, 79 (Kan. 2010). When using tools of statutory construction, the court must "mov[e] outside the text of the provision and examin[e] evidence of legislative intent, legislative

The major question is, if the definite article "the" is ambiguous, when would any statutory language be unambiguous?[16] Courts should not extrapolate ambiguity where it does not exist in order to side-step the entire goal of statutory interpretation—to ascertain the clear meaning of a statute.[17] To demonstrate that the Kansas Supreme Court inappropriately found the word "the" to be ambiguous, this Comment will examine (1) what it means for a statutory term to be ambiguous; (2) the grammatical and legal significance of the word "the"; and (3) the use of the word "the" in section 8-1567(i)(1).

Part II of this Comment examines the chronology of the *Gensler* case. Part III examines how the Kansas Supreme Court handled statutory interpretation in the past and the legal background behind these sets of rules. Part IV analyses *Gensler* and examines how the Kansas Supreme Court came to the conclusion that the word "the" was ambiguous. Part V argues the Kansas Supreme Court incorrectly interpreted the word "the" in order to side-step the clear meaning behind section 8-1567(i)(1).

II. CASE DESCRIPTION

The district court sentenced Stacy A. Gensler to felony DUI under section 8-1567(b)(1)(B) because the court found Gensler had two previous DUI convictions under Wichita Municipal Ordinance ("W.M.O.") 11.38.150.[18] However, Gensler argued his two previous DUI convictions under W.M.O. 11.38.150 should not be counted as "convictions" because W.M.O. 11.38.150 criminalized a broader range of conduct than section 8-1485.[19] However, the district court rejected this argument and found him guilty of felony DUI.[20]

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history, or employ the additional canons of statutory construction to determine the legislature's meaning." *Id.* Thus, it is important when courts utilize tools of statutory interpretation that they do not supplant the legislature's intended meaning for that of their own.

16. *See Gensler*, 423 P.3d at 496–97 (Stegall, J., dissenting).

17. *See id.* at 496.

18. *See id.* at 490. It is extremely important to determine whether a particular prior DUI conviction will qualify as a sentence enhancement. KAN. STAT. ANN. § 8-1567(b)(1)(A)–(E) (Supp. 2017). Particularly, if Gensler's prior DUI convictions qualified as sentence enhancements, it would elevate a class B misdemeanor into a felony. *See id.*

19. *Gensler*, 423 P.3d at 491. On its face, W.M.O. 11.38.150 is identical to section 8-1567. *Compare* KAN. STAT. ANN. § 8-1567(i)(1), *with* WICHITA, KAN. MUN. ORDINANCE 11.38.150 (2015). However, W.M.O. 11.38.150 is actually broader than section 8-1567, because W.M.O. 11.04.400 defines "vehicle" more broadly than section 8-1485 does. *See* State v. Williams, 416 P.3d 1024, 1027 (Kan. 2018). Under the Wichita city ordinance, a defendant could be convicted of DUI while riding an electric scooter, lawn mower, or bicycle. *See* WICHITA, KAN. MUN. ORDINANCE 11.04.400 (2015). However, under K.S.A. section 8-1485, electric assistive mobility devices or devices moved by human power are not considered "vehicles," and thus, a defendant could not be convicted of a DUI while riding a bicycle. *See* KAN. STAT. ANN. § 8-1485 (2018).

20. *Gensler*, 423 P.3d at 491–92. In 2016, the city of Wichita amended W.M.O. 11.04.400 and changed the definition of "vehicle" to mirror K.S.A. section 8-1485. *See* WICHITA, KAN. MUN.

On appeal, Gensler again argued his two previous DUI convictions should not count as sentence enhancements.[21] The appellate court rejected this argument, holding that W.M.O. 11.04.400 was a divisible ordinance.[22] Thus, it was appropriate for the sentencing judge to conduct a limited amount of fact-finding to determine whether Gensler's previous DUI convictions were for driving a car under the influence of alcohol or not.[23]

Gensler petitioned for the Kansas Supreme Court to review whether a prior conviction under W.M.O. 11.04.400 could be considered a "conviction" under section 8-1485(i)(1), and the court granted review.[24]

III. LEGAL BACKGROUND

The Kansas Supreme Court has stated courts will only use tools of statutory construction if the statutory language is ambiguous.[25] Statutory language is ambiguous or unclear if it contains multiple meanings and reasonable minds could differ on the proper meaning of the statute.[26] If the language is ambiguous, Kansas courts will look at legislative history, canons of construction, and other tools of statutory construction to ascertain the meaning of the statute.[27]

In the past, the Kansas Supreme Court has found statutory terms unambiguous and utilized the clear meaning.[28] For example, in *State v. Paul*,[29] the court found that K.S.A. section 65-4161 was unambiguous and utilized the clear meaning of the statutory language articulated by the legislature.[30] The court refused to read any extra requirements into the statutory language.[31] Further, in *State v. Comprehensive Health of Planned Parenthood of Kansas & Mid-Missouri, Inc.*,[32] the Kansas Supreme Court found the relevant statutory language in section 65-445(c) unambiguous.[33] The court stated a "court must first attempt to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings."[34] These and other cases where the Kansas Supreme

ORDINANCE 11.04.400 (2018). However, Wichita enacted a separate ordinance which criminalizes bicycling while under the influence of alcohol. *Id.* at 48.190.

21. State v. Gensler, 369 P.3d 342, *11–12 (Kan. Ct. App. 2016) (unpublished).
22. *Id.*
23. *Id.*
24. *Gensler*, 423 P.3d at 489.
25. State v. Marks, 298 P.3d 1102, 1114 (Kan. 2013).
26. State v. Paul, 175 P.3d 840, 844 (Kan. 2008).
27. *In re* BHCMC, L.L.C., 408 P.3d 103, 109 (Kan. 2017).
28. *Paul*, 175 P.3d at 844–45; *State v. Comprehensive Health of Planned Parenthood of Kan. & Mid-Missouri, Inc.*, 241 P.3d 45, 69–70 (Kan. 2010).
29. 175 P.3d 840 (Kan. 2008).
30. *Id.* at 844–45.
31. *Id.*
32. 241 P.3d 45 (Kan. 2010).
33. *Id.* at 70.
34. *Id.* at 49.

Court found statutory language to be unambiguous demonstrate the court's general commitment to giving ordinary terms their ordinary meaning.[35]

IV. COURT DECISION

In *Gensler*, the court focused particularly on what it means for an "ordinance to prohibit 'the' acts that the state DUI statute prohibits."[36] The State argued any conviction under an ordinance that prohibits the same acts as the state DUI statute would count as a "conviction" even if the ordinance criminalized a broader range of conduct.[37] Conversely, the defense argued section 8-1567(i)(1) required side-by-side element matching and that any ordinance that criminalized a broader range of conduct should not be utilized to increase a defendant's sentence.[38]

The court found either interpretation was "plausible" because the word "the" in the statutory phrasing is ambiguous.[39] "A conviction counts as a prior DUI if the conviction is based on an ordinance 'that prohibits *the* acts that this section prohibits.'"[40] Based upon this finding, the court went on to use tools of statutory construction.[41] Based upon legislative intent, the legislature's silence after previous opinions, and the rule of lenity, the court found the legislature intended sentencing judges to use the element matching test.[42] Thus, a prior conviction under W.M.O. 11.04.400 would not count as a prior conviction under section 8-1567(i)(1).[43] The Kansas Supreme Court ruled in favor of the defendant, reversed the appellate court's decision, vacated Gensler's sentence, and remanded the case to the district court for resentencing without the inclusion of the two previous Wichita DUI convictions.[44]

V. ANALYSIS

A court's goal should always be to ascertain the legislature's intended meaning behind the statutory language.[45] Courts should not search for ambiguity where it does not exist in order to "justify reading something into

35. *See State v. Paul*, 175 P.3d 840, 844–45; *Comprehensive Health of Planned Parenthood*, 241 P.3d at 69.
36. *State v. Gensler*, 423 P.3d 488, 493 (Kan. 2018).
37. *Id.* at 492–93.
38. *Id.* at 493.
39. *Id.*
40. *Id.*
41. *Id.*
42. *Gensler*, 423 P.3d at 493.
43. *Id.* at 494.
44. *Id.* The Kansas Supreme Court held that Gensler should be found guilty of a class B misdemeanor, instead of a felony. *Id.* This decision impacted Gensler's sentence and drastically lowered the amount of time he had to spend in jail and the fine he had to pay. *Id.*
45. State v. Fredrick, 251 P.3d 48, 52 (Kan. 2011).

the statute that is not readily found in it."[46] Unfortunately, in *Gensler*, the court found ambiguity where it did not exist.

A. Ambiguity Requirement

First, the court in *Gensler* incorrectly states the standard for ambiguity.[47] The court opines that the language in section 8-1567(i)(1) is ambiguous because multiple meanings are "plausible."[48] However, just because multiple meanings can be extrapolated from statutory language does not mean the language is ambiguous.[49] For statutory language to be ambiguous, reasonable minds must be able to differ on the correct meaning behind the language.[50] Terms will only be ambiguous if under a "natural and reasonable" reading multiple interpretations are ascertainable.[51] If plausibility was the correct standard, almost all statutory language would be ambiguous, because one can infer multiple "plausible" meanings behind any statutory language. This is why courts try to ascertain the most *reasonable* interpretation based upon an ordinary and plain reading of the statutory language before using different tools of statutory interpretation.[52]

B. Ambiguity and the Word "The"

If the *Gensler* court would have analyzed the *clear meaning* of section 8-1567(i)(1), the court most likely would not have found the word "the" to be ambiguous. The word "the" is a definite article, meaning it introduces a noun.[53] A writer will utilize the word "the" if the writer already believes

46. *Id.*

47. *See State v. Paul*, 175 P.3d 840, 844 (Kan. 2008). The court states that a statute is ambiguous if "the statute contains provisions or language of doubtful or conflicting meaning, as gleaned from a natural and reasonable interpretation of its language." *Id.*

48. *Gensler*, 423 P.3d at 493. The court finds the statute could be interpreted one of two ways. *Id.* First, the statute could be interpreted to require the city ordinance to be identical to or narrower than the state statute. *Id.* Or the statute could be interpreted to allow for prior convictions to count, irrespective of whether they prohibit a wider range of conduct than section 8-1567 does, so long as the acts prohibited by section 8-1567 are included in the city ordinance. *Id.*

49. *See* Weber v. Tillman, 913 P.2d 84, 96–97 (Kan. 1996). In *Weber*, the court is applying the rules of interpretation to a contract, stating "[t]o be ambiguous, a contract must contain provisions or language of doubtful or conflicting meaning, as gleaned from a natural and reasonable interpretation of its language." *Id.* at 96. However, these same rules of interpretation apply to statutory language as well. *See Paul*, 175 P.3d at 844 (citing *Weber*, 913 P.2d at 97).

50. *Paul*, 175 P.3d at 844.

51. *Id.*

52. State v. McCurry, 105 P.3d 1247, 1250 (Kan. 2005) (citing State v. Cox, 908 P.2d 603, 618 (1995)). The court states the common principle that ambiguity must be viewed in the light most favorable to the defendant. *Id.* However, the court reiterates the rule of lenity is "subordinate to the rule that judicial interpretation must be reasonable and sensible to effect legislative design and intent." *Id.*

53. *Definite Article*, LITERARY DEVICES, https://literarydevices.net/definite-article/ (last visited Oct. 30, 2019).

the reader knows what is being referred to.[54] The word "the" is a demonstrative word and particularizes the meaning of a noun.[55] An example would be: "have you gotten *the* mail?" In this instance, "the" denotes particular mail; the speaker assumes the listener already knows which mail the speaker is referencing.[56] American courts have analyzed the use of the word "the" in statutory language and have identified its ability to particularize a specific noun.[57] "It is a rule of law well-established that the definite article 'the' particularizes the subject which it precedes. It is a word of limitation."[58]

Courts differentiate between the definite "the" and indefinite articles like "a" or "an".[59] The definite article "the" particularizes the subject being discussed, while the indefinite article "a" or "an" is abstract and precedes an unqualified noun.[60] For example, in *Closet Maid v. Sykes*,[61] the court found the legislature's use of the word "the" was not ambiguous and particularized the statutory language.[62] In *Closet Maid*, the court was interpreting section 440.09(1)(b) of the Florida Statutes, which deals with worker compensation law.[63] Section 440.09(1)(b) stated the workplace accident had to be "*the* major contributing cause."[64] The court determined "the" was a definite article that modified "major contributing cause," and clearly signified the workplace accident had to be the greater of the two causes.[65] However, if the legislature had utilized the indefinite article "a," the workplace accident would have only needed to be one of the causes to the injury.[66] The use of the word "the" in section 440.09(1)(b) specified when the Florida legislature intended Florida workers to be compensated for workplace accidents.[67]

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54. *The Definite Article*, EDUCATION FIRST, https://www.ef.edu/english-resources/english-grammar/definite-article/ (last visited Oct. 30, 2019).

55. Howell v. State, 138 S.E. 206, 210 (Ga. 1927).

56. *See The Definite Article*, *supra* note 54.

57. *See* Brooks v. Zabka, 450 P.2d 653, 655 (Colo. 1969); Closet Maid v. Sykes, 763 So. 2d 377, 381 (Fla. 2000); Hoffman v. Franklin Motor Car Co., 122 S.E. 896, 900 (Ga. 1924); Lowry v. Mankato, 42 N.W.2d 553, 558 (Minn. 1950).

58. Am. Bus Ass'n v. Slater, 231 F.3d 1, 4–5 (D.C. Cir. 2000) (citing *Brooks*, 450 P.2d at 655).

59. *See Brooks*, 450 P.2d at 655.

60. *Definite Article*, *supra* note 53.

61. 763 So. 2d 377 (Fla. 2000).

62. *Id.* at 381–82.

63. *Id.* at 379–82. Section 440.09(1)(b) determines the compensation a worker gets after a compensable workplace accident when the worker has a pre-existing condition. *See* FLA. STAT. ANN. § 440.09(1)(b) (1994). Sykes was working for Closet Maid as a warehouse worker; his back was injured when a box fell from a forklift hitting him in the head. *Closet Maid*, 763 So. 2d at 379. It was later identified that Sykes suffered from spinal stenosis, which causes deterioration to the spine. *Id.* at 379–80.

64. *Closet Maid*, 763 So. 2d at 381 (emphasis added).

65. *Id.*

66. *Id.*

67. *Id.*

Further, the word "the" is used to indicate something previously mentioned.[68] In *Palmer v. Kansas City*,[69] a jury instruction concerning Kansas City's duty to keep sidewalks in a reasonably safe condition was adequate because the word "the" particularized what was required of the city.[70] "The article 'the,' as used in the instruction, indicated identity with something previously mentioned; and in the instant case it refer[red] to the prior necessary finding that the sidewalk '*was not in a reasonably safe condition*.'"[71]

C. Ambiguity and K.S.A. Section 8-1567(i)(1) (Supp. 2017)

When reading K.S.A. section 8-1567(i)(1), it is apparent that the Kansas legislature used the definite article "the" to particularize what was being discussed and to indicate something previously mentioned.[72] Section 8-1567(i)(1) states, "[f]or the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section: [c]onvictions for a violation . . . of an ordinance of any city . . . which prohibits *the* acts that this section prohibits . . . shall be taken into account."[73] In this instance, the use of the definite article "the" particularizes the "acts" the legislature is referring to and which acts must be included in the prior conviction.[74] It is not ambiguous which "acts" the definite article "the" is referring to because "the acts this section prohibits" are clearly laid out in section 8-1567(a)(1)–(5).[75]

The legislatures use of the definite "the" is not ambiguous because it particularizes the sentence and only one interpretation can be reasonably ascertained from its use. Reasonably interpreted, section 8-1567(i)(1) states

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68. *Definite Article*, *supra* note 53.
69. 248 S.W.2d 667 (Mo. Ct. App. 1952).
70. Palmer v. Kan. City, 248 S.W.2d 667, 670 (Mo. Ct. App. 1952).
71. *Id.*
72. *See* KAN. STAT. ANN. § 8-1567 (Supp. 2017).
73. *See id*. § 8-1567(i)(1) (emphasis added).
74. *Id.*
75. *See id*. § 8-1567(a)(1)–(5) (Supp. 2017). Particularly, section 8-1567(a)(1)–(5), lays out which acts are prohibited and states that:

> (a) Driving under the influence is operating or attempting to operate any vehicle within this state while:
> (1) The alcohol concentration in the person's blood or breath as shown by any competent evidence . . . is 0.08 or more;
> (2) the alcohol concentration in the person's blood or breath, as measured within three hours of the time of operating or attempting to operate a vehicle, is 0.08 or more;
> (3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;
> (4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or
> (5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

Id.

that any city ordinance which prohibits "the acts that" section 8-1567(a)(1)–(5) "prohibits . . . shall be taken into account."[76] It was never argued by any party that W.M.O. 11.04.400 did not prohibit "the acts that" section 8-1567(a)(1)–(5) "prohibits."[77] Instead, the defendant argued that W.M.O. 11.04.400 prohibited more acts than section 8-1567(a)(1)–(5) did.[78] Based upon the text of section 8-1567(i)(1), this would not matter.[79] However, based upon the Kansas Supreme Court's interpretation of section 8-1567(i)(1), the statute now reads, "[c]onvictions for a violation . . . of an ordinance of any city . . . which prohibits" *the same acts* "that this section prohibits . . . shall be taken into account."[80] Unfortunately, it would appear the Kansas Supreme Court "substituted its idea of a proper statute in place of the one the Legislature passed," and read in extra language not present in section 8-1567(i)(1).[81]

VI. CONCLUSION

Courts should not substitute their own judgement for that of the legislature.[82] If a court is able to find ambiguity in the definite article "the," it is difficult to imagine statutory language that would be precise enough to be unambiguous.[83] It is not the job of the court to determine what the law ought to be.[84] It is job of the court to ascertain the legislature's intended meaning behind statutory language.[85] If the language is unambiguous, the court's inquiry should stop there.[86] Unfortunately, in *Gensler*, the court missed the mark and should have found K.S.A. section 8-1567(i)(1) unambiguous and should not have resorted to tools of statutory construction to interpret the statute.

76. *See id*. § 8-1567(i)(1).
77. *See Gensler*, 423 P.3d at 490–93.
78. *See id*. at 496 (Stegall, J., dissenting).
79. *See* KAN. STAT. ANN. § 8-1567(i)(1).
80. *See id*. (emphasis added); *Gensler*, 423 P.3d at 496.
81. *Gensler*, 423 P.3d at 496.
82. *State v. Paul*, 175 P.3d 840, 844 (Kan. 2008).
83. *Gensler*, 423 P.3d at 496.
84. *Paul*, 175 P.3d at 844.
85. *Id.*
86. *Id.*