

Subject

*Highways - Highway Patrol
Deputies + Congress
State Boards
Fire Marshall*

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

July 9, 1974

Opinion No. 74-219

Col. William L. Albott
Superintendent
Kansas Highway Patrol
State Office Building
Topeka, Kansas 66612

Dear Colonel Albott:

In your letter of June 10, 1974, you inquire whether members of the Kansas Highway Patrol, and presumably other law enforcement agencies, are authorized to enforce the provisions of Chapter 31 of the Kansas statutes as well as any rules and regulations adopted pursuant thereto. Specifically, you inquire whether Senate Bill 255, as enacted by the 1974 Legislature, limits such authority or whether "the broad powers granted in other sections to peace officers allow them to enforce these rules and regulations even though they are not specifically spelled out."

We note that Senate Bill 255, in addition to adding new material, amends K.S.A. 1972 Supp. 31-133 and 31-139. We have reviewed the sections thus amended, Senate Bill 255 and the entire balance of Chapter 31, and it appears that every reference made to enforcement of the act and its accompanying rules and regulations specifically delegates such enforcement authority to "the state fire marshal or any person designated in section 6 [31-137] of this act."

We further note that 31-137 provides:

"The state fire marshal, his deputies, the chief of any organized fire department of any municipality, whether such fire department is regular or volunteer, or any member of any such

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fire department who has been duly authorized by the chief thereof, shall enforce the provisions of this act and any rules and regulations adopted pursuant thereto."

It is, therefore, our opinion that the enforcement of the provisions of Chapter 31, as well as the rules and regulations adopted pursuant thereto, is solely within the jurisdiction of the State Fire Marshal and the other persons specified in 31-137. Members of the Highway Patrol as well as other law enforcement officers are not authorized to enforce these statutory provisions, rules or regulations.

By way of analogy, we note that "any peace officer" is given the right of immediate entry and inspection with respect to any premises licensed as a "club" under K.S.A. 41-2601, et seq. We find specific statutory authority for this right in Section 2613, which provides:

"The right of immediate entry and inspection at any time of any premises licensed as a club under this act, or of any premises subject to the control of any club licensed under this act by any duly authorized officer or agent of the director, or by any peace officer, shall be a condition on which every club license shall be issued. . . ."

No such specific authority is found in Chapter 31 nor in any other provisions relating to the authority of the State Fire Marshal to enforce its provisions.

Nothing in this opinion is intended to restrict or limit the authority of Highway Patrol members, as Kansas peace officers, to conduct or to participate in the investigation of criminal violations in this state.

Very truly yours,



VERN MILLER
Attorney General

VM:DLM:gh