



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 28, 1976

ATTORNEY GENERAL OPINION NO. 76-305

Mr. B. E. Nordling
City Attorney
City of Hugoton
P. O. Box 250
Hugoton, Kansas 67951

Re: Automobiles and Other Vehicles--Authorized Emergency Vehicles--Rights, Duties and Liability of Drivers Thereof.

Synopsis: A personal vehicle cannot be classified as a "authorized emergency vehicle" because of use, but only by a designation as a "authorized emergency vehicle" as per K.A.R. 36-2-4.

If a personal vehicle has been designated as a "authorized emergency vehicle," under the provisions of K.A.R. 36-2-4, the driver of a "authorized emergency vehicle" may exercise the privileges set forth in Section 10 of the Standard Traffic Ordinances as adopted by the City of Hugoton.

* * *

Dear Mr. Nordling:

Your letter of September 20, 1976, requested this office to render a formal legal opinion as to whether a personal vehicle being driven by a volunteer fireman to the fire station is a "authorized emergency vehicle," within the provisions of Section 10 of the Standard Traffic Ordinance which has been adopted by the City of Hugoton.

Section 10 of the Standard Traffic Ordinance recites K.S.A. 8-1506. Section 10, Subsection (a) states:

"The driver of any authorized emergency vehicle when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated."

It is important to note the statute assumes the vehicle is a "authorized emergency vehicle" and does not define said vehicle. Therefore, it is imperative that "authorized emergency vehicle" be defined. K.S.A. 8-1404 defines "authorized emergency vehicle". Said statute states:

"'Authorized emergency vehicle' means such fire department vehicles, police vehicles, and ambulances as are publicly owned and such other publicly or privately owned vehicles as are designated by the Secretary of Transportation pursuant to K.S.A. 8-2010."

K.S.A. 8-2010 states:

"The Secretary of Transportation shall designate any particular vehicle as an authorized emergency vehicle upon the finding that designation of such vehicle is necessary to the preservation of life or property or to the execution of emergency governmental functions. The designation shall be in writing and the written designation shall be carried in the vehicle at all times but failure to carry the written designation shall not affect the status of the vehicle as an authorized emergency vehicle."

The designation of authorized emergency vehicles as authorized by K.S.A. 8-2010 may be found in Kansas Administrative Regulation 36-2-3, et seq. K.A.R. 36-2-4 states:

"An application for the designation of a vehicle as an emergency vehicle shall have the following approvals endorsed upon the application..."

Subsection (d) states:

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"Volunteer or other firemen using their personal vehicles in answering emergency calls shall have the approval of the Chief of the Fire Department, Chief of Police or the City Marshal of the City maintaining the fire department, and the Sheriff of the county in which the city is located,..."

Therefore, unless a volunteer fireman meets the requirements of K.A.R. 36-2-4 in having his vehicle designated as a authorized emergency vehicle, said vehicle, when responding to a call, could not be defined as a "authorized emergency vehicle", nor afforded the same protection as a "authorized emergency vehicle", under the provisions of Section 10 of the Standard Traffic Ordinance as adopted by the City of Hugoton. Personal vehicles cannot be classified as "authorized emergency vehicles" because of use, but only by designation as per K.A.R. 36-2-4.

If the personal vehicle of the volunteer fireman has been designated a "authorized emergency vehicle" under the provisions of K.A.R. 36-2-4, the driver of a "authorized emergency vehicle" may exercise the privileges set forth in Section 10 of the Standard Traffic Ordinances as adopted by the City of Hugoton. These privileges may be exercised in driving to the fire station or driving directly to the specific location of the emergency. Such action would be within the meaning of a "response" under Section 10 of the Standard Traffic Ordinances.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/RRS/cgm