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March 21, 1979

ATTORNEY GENERAL OPINION NO. 79- 35

Mr. Glen D. Cooper  
Sheriff of Allen County  
P.O. Box 433  
Iola, Kansas 66749

Re: Counties and County Officers -- Sheriff -- Deputies.  
  
Automobiles And Other Vehicles -- Publicly-Owned Motor  
Vehicles -- How Marked.

Synopsis: K.S.A. 19-805 authorizes a sheriff to appoint a deputy for  
the limited purpose of serving civil process.

The selective use of an unmarked vehicle by sheriffs and  
specified employees does not violate the requirements for  
marking of publicly-owned vehicles contained in K.S.A. 8-305.

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Dear Sheriff Cooper:

You inquire whether it would be possible to deputize your secretary for  
the limited purpose of serving civil process. The primary statute  
concerning service of civil process is K.S.A. 60-303 which provides:

"Service of process shall be made by a sheriff within his  
or her county, by said sheriff's deputy or by some person  
specifically appointed by the judge for that purpose, or in  
said judge's absence, by the clerk, except that a subpoena  
may be served as provided in K.S.A. 60-245(d)."

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In order for your secretary to be authorized to make legal service of civil process she must either be an appointed deputy or specially appointed by the judge. The appointment of deputies is governed by K.S.A. 19-805 which provides:

"Each sheriff may appoint such and so many deputies as he may think proper, for whose official acts and those of his undersheriffs he shall be responsible, and may revoke such appointments at his pleasure; and persons may also be deputed by such sheriff or undersheriff in writing, to do particular acts; and the sheriff and his sureties shall be responsible, on his official bond, for the default or misconduct of his undersheriff and deputies." (Emphasis supplied.)

From the foregoing it is apparent that the sheriff may properly limit the scope of the deputy's authority by so indicating that authority in the written appointment. As such, your secretary could be appointed as a deputy limited to the act of serving civil process.

One question involved in such an appointment would be whether permanent appointment would require certification from the Kansas Law Enforcement Training Center. Subsection (a) of K.S.A. 1978 Supp. 74-5608 provides:

"(a) No person shall receive a permanent appointment as a police officer or law enforcement officer, unless such officer has been awarded a certificate attesting to satisfactory completion of a basic course of not less than four hundred (400) hours of accredited instruction at the training center or at a training school certified in accordance with the provisions of K.S.A. 1978 Supp. 74-5604 and amendments thereto, has been awarded such a certificate for not less than the number of hours of instruction required by this act at the time such certificate was issued or received a permanent appointment as a police officer or law enforcement officer prior to July 1, 1969."

In order to construe the application of this statute it is necessary to consider the definition contained in K.S.A. 1978 Supp. 74-5602(e) which states:

"(e) 'Police officer' or 'law enforcement officer' means a full-time, salaried officer or employee of the state, a county or a city, whose duties include the prevention or detection of crime and the enforcement of the criminal or traffic laws of this state or of any municipality thereof. Such terms shall include, but not be limited to, the sheriff, undersheriff and full-time, salaried deputies in the sheriff's office in each county; . . . ." (Emphasis supplied.)

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Although the latter part of the definition would appear to indicate that all sheriff's deputies are to be considered police officers or law enforcement officers, it is our opinion that the controlling factor would be the deputy's duties, rather than his or her title. For this reason, a deputy without authorization to participate in the prevention or detection of crime or the enforcement of the criminal or traffic laws of this state would be excluded from the definition. Since the mandatory certification of K.S.A. 1978 Supp. 74-5608 applies only to those persons who are included in the definition set out in K.S.A. 1978 Supp. 74-5602(e), a deputy appointed only for the particular act of service of civil process would not require certification by the Law Enforcement Training Center in order to receive permanent appointment. It should be noted that this opinion relates only to the specific area of service of process and should not be interpreted to permit permanent appointment for particular acts in other areas of duties.

You further inquire whether it would be permissible for your office to have one unmarked vehicle for use on "stake outs" and other duties. K.S.A. 8-305 provides:

"All motor vehicles owned or leased by any political subdivision of the state of Kansas shall bear the name of the political subdivision owning such vehicle plainly printed on both sides thereof, in plain letters not less than two (2) inches in height and with not less than one-fourth (1/4) inch stroke, together with the name of the political subdivision. This act shall not apply to the following: Municipal fire apparatus, police patrols and ambulances, the general appearance of which is unmistakable; and passenger vehicles used by plain clothes police officers working in the employ of any political subdivision.

This statute clearly applies to motor vehicles owned by the county and used by the sheriff's office personnel; therefore, authorization for an unmarked vehicle must be by way of one of the enumerated exceptions. It is our opinion that sheriff's office personnel would be included in the exception stated for plain clothes police officers under certain circumstances. In this regard, the provisions of K.S.A. 19-822 establishing uniform requirements for sheriffs and deputies are pertinent.

"County sheriffs and their deputies, when on duty, shall be dressed in a distinctive uniform which shall be furnished by the county, and display a badge of office: Provided, The wearing of such uniform and badge shall be discretionary at the option of the sheriff when he or his deputies are engaged in special investigations or mental patient assignments: And provided further, That special deputies appointed by the sheriff, detectives, clerical personnel and civil process servers; and deputies while engaged in the transportation of prisoners may be excluded from the requirements of this section at the option of the sheriff."

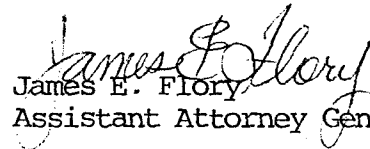
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Since this statute authorizes sheriffs and deputies to perform selected duties in plain clothes, the use of an unmarked vehicle under the specified circumstances would not involve a violation of K.S.A. 8-305. In view of the explicit exception contained in K.S.A. 8-305 and the discretion afforded to sheriffs in K.S.A. 19-822, it is our opinion that the selective use of an unmarked law enforcement vehicle is appropriate and in no way offends the statute requiring marking of "publicly-owned" vehicles. It should be noted that our opinion pertains only to the persons and circumstances discussed, and should not be construed as approving the use of an unmarked vehicle for general police work.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



James E. Flory  
Assistant Attorney General

RTS:TDH:JEF:may