



STATE OF KANSAS

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February 9, 1981

ATTORNEY GENERAL OPINION NO. 81- 38

Dr. Arland V. Hicks  
Transportation Safety Administrator  
Kansas Department of Transportation  
Tenth Floor  
State Office Building

BUILDING MAIL

Re: Automobiles and Other Vehicles -- Powers of State and  
Local Authorities -- Designation of Authorized Emergency  
Vehicles

Synopsis: Even though a person is neither a full-time nor part-time  
employee of a sheriff's department, if such person is  
regularly commissioned as a deputy sheriff, such person is  
an eligible applicant under K.A.R. 36-2-4(f) (4) for  
designation of such person's private vehicle as an  
authorized emergency vehicle. Cited herein: K.S.A.  
8-1404, 8-2010, 8-2204, K.A.R. 36-2-4.

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Dear Dr. Hicks:

You have inquired whether it is appropriate for the Kansas Department  
of Transportation (KDOT) to approve an application for designation of  
the applicant's private vehicle as an authorized emergency vehicle.

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It appears from the material you have submitted that the applicant serves as a security officer for the Agricultural Hall of Fame situated within the city limits of Bonner Springs in Wyandotte County. The correspondence accompanying your letter also suggests that there is a dispute of some duration between the Chief of Police of Bonner Springs and the Wyandotte County Sheriff's Department as to whether the applicant is legally entitled to have his vehicle designated as an emergency vehicle.

As you are aware, the designation of vehicles as authorized emergency vehicles is provided for in K.S.A. 8-2010, which vests the authority to make such designations in the secretary of transportation. Pursuant to that statute, such authority is to be exercised as to any particular vehicle "upon a finding that designation of such vehicle is necessary to the preservation of life or property or to the execution of governmental functions." It also is to be noted that vehicles designated by the secretary as authorized emergency vehicles are included in the definition of "authorized emergency vehicle" in K.S.A. 8-1404, for purposes of the Uniform Act Regulating Traffic on Highways. (See K.S.A. 8-2204.)

To carry out his authority, the secretary of transportation has adopted rules and regulations which not only provide the procedure necessary to obtain an authorized emergency vehicle designation, but also prescribe standards to be met in order to qualify for such designation. The regulation relevant to your inquiry is K.A.R. 36-2-4, which requires that applications for such designation must be approved by various public officers, depending on the type of vehicle for which application is made. Of pertinence here are subsections (f)(4) and (h) of the existing regulation. (This regulation has been amended, effective May 1, 1981, but the substance of these subsections will be unaffected by the amendment.)

Subsection (f)(4) requires that the application of an undersheriff or deputy sheriff to have his or her private vehicle designated as an emergency vehicle must be approved by the sheriff appointing such officer. Subsection (h), however, is a "catch-all" provision and relates to applications not covered by other subsections dealing with applications by specific persons or for particular vehicles. In effect, subsection (h) requires that where an "applicant resides or maintains an office or place of business" within the corporate limits of a city, the application must be approved by the chief of police or city marshal of such city and the sheriff of the county in which such city is located.

In this instance, the application has been approved by the Wyandotte County Sheriff, but the Bonner Springs Chief of Police, who objects to the application being approved, contends that his approval also is required.

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Such contention is based on the belief that since the applicant is a volunteer, reserve or special deputy, he does not qualify as a deputy sheriff within the meaning of K.A.R. 36-2-4(f)(4) and, therefore, the applicant's application must be approved by both the sheriff and the chief of police pursuant to K.A.R. 36-2-4(h). Such analysis is based on information the chief of police received from this office regarding the status of reserve police officers as law enforcement officers within the context of various statutes, and it is this information which has prompted his assertion that the applicant does not qualify as a deputy sheriff within the meaning of K.A.R. 36-2-4(f)(4).

It is unnecessary to consider the merits of that assertion here, however. Information accompanying the application in question discloses that the applicant is not only a reserve deputy sheriff, but he has received a regular commission as a deputy sheriff, as well. We have confirmed such facts with the Legal Advisor to the Wyandotte County Sheriff's Department. The Legal Advisor informed us that the applicant held both commissions at the time his application was submitted and that he continues to hold both commissions by action of the present incumbent of the office of sheriff in Wyandotte County. However, he also informed us that the sheriff's approval of the application in question has been made on the condition that the applicant will not operate his private vehicle as an authorized emergency vehicle in any location other than the grounds of the Agricultural Hall of Fame.

Even though the applicant is neither a full-time nor part-time employee of the Wyandotte County Sheriff's Department, we do not believe such fact has relevance to the consideration at hand. Subsection (f)(4) of K.A.R. 36-2-4 does not impose any such qualifications on deputy sheriffs who are applicants under that subsection. Since the applicant is in fact a regularly commissioned deputy sheriff, as well as a reserve deputy, we do not find it inappropriate for the secretary of transportation to grant such application which has been approved by the Wyandotte County Sheriff.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



W. Robert Alderson  
First Deputy Attorney General

RTS:WRA:may