



STATE OF KANSAS

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October 5, 1981

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ATTORNEY GENERAL OPINION NO. 81- 225

Mr. James W. Bouska
Assistant Merriam City Attorney
General Square Center, Suite 480
9800 Metcalf Avenue
Overland Park, Kansas 66212

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

Synopsis: Vehicles owned by a corporation which provides animal control services to a city may be equipped with a red light and/or siren only if such vehicles are designated as "authorized emergency vehicles" by the secretary of transportation. The power to determine whether a vehicle meets the statutory and regulatory requirements for "authorized emergency vehicle" status rests with the secretary of transportation. Cited herein: K.S.A. 8-1404, 8-2010, 60-2101; K.A.R. 1981 Supp. 36-2-4, 36-2-9.

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Dear Mr. Bouska:

On behalf of Thomas J. Stockwell, Merriam City Attorney, you request our opinion concerning the designation of certain privately-owned vehicles of a corporation as "authorized emergency vehicles." You state that the city of Merriam has contracted with a corporation to provide personnel and equipment to enforce its animal control ordinances, and that the city's humane control officers "feel that it is necessary that emergency

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equipment be installed on their vehicles so that it would be available from time to time to respond to emergency situations (e.g., rabid animal loose, animal attacking human being)." Your question is whether such privately-owned vehicles of the corporation providing animal control services to the city may be equipped with "emergency equipment." We assume that your inquiry relates to the installation of a red light and/or a siren on the subject vehicles.

The term "authorized emergency vehicle" is defined in K.S.A. 8-1404 as follows:

"'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."

As the above-quoted definition indicates, 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."

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. One such regulation, K.A.R. 1981 Supp. 36-2-4, requires that applications for the subject designation must be approved by various public officers, depending on the type of vehicle for which application is made. It appears that the application of the corporation providing animal control services for the city of Merriam would be subject to subsection (1) of said regulation, which requires the approval of the chief of police and sheriff of the county in which the applicant maintains an office or place of business.

Another regulation concerning authorized emergency vehicles, K.A.R. 1981 Supp. 36-2-9, provides, in part, that

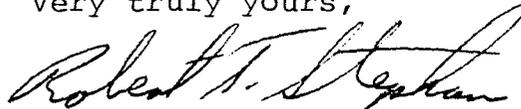
"[n]o person, partnership, association, corporation, municipality, or public official, shall operate or cause to be operated upon a public highway, road or

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street within this state, a motor vehicle with a red light, siren, or red light and siren thereon, except fire department vehicles, police vehicles and ambulances that are publicly owned as provided in K.S.A. 1980 Supp. 8-1404, which has not been designated as an emergency vehicle by the department of transportation"

In accordance with the above-quoted regulation, it is our opinion that the vehicles of the corporation providing animal control services to the city of Merriam may be equipped with a red light and/or siren only if such vehicles are designated as authorized emergency vehicles by the secretary of transportation. The power to determine whether the privately-owned vehicles meet the statutory and regulatory requirements for "authorized emergency vehicle" status rests with the secretary of transportation. Of course, a final order of the secretary of transportation denying an application for the designation could be appealed to district court, pursuant to the provisions of K.S.A. 1980 Supp. 60-2101(d). However, the scope of judicial review of the secretary's order would be limited. See Gillet v. U.S.D. No. 276, 227 Kan. 71, 79 (1980).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm