Dear Mr. Rogers:

You have requested an opinion from this office regarding whether K.S.A. 19-261 requires a county to provide ambulance services.

K.S.A. 19-261 states in pertinent part:

"The board of county commissioners of any county may provide as a county function . . . ambulance services within all or any part of their respective counties upon such terms and conditions, and for such compensation as may be agreed upon which shall be payable from the county general fund." (Emphasis added.)
not have been utilized in K.S.A. 19-262. Rather, the legis-
lature would have utilized the term "when" or other unequivo-
cal language.

We are mindful that in certain instances the term "may" is
construed to mean "shall" or "must." In such cases it is
considered that the legislative intent is that the power
granted in permissive form is mandatory in substance. City
of Wauwatosa v. County of Milwaukee, 125 N.W.2d 386 at 398
(Wis., 1963). The court in Gleason v. Sedgwick County, supra,
stated that

"may means must only in cases where public
interests and rights are concerned, and where
the public or third persons have a claim de
jure that the power be exercised." Id. at
635.

It is our opinion that the test set out in Gleason v. Sedgwick
County is not satisfied in the present context because no de
jure or independent claim of right exists vis a vis the avail-
ability of government sponsored ambulance services. Therefore,
K.S.A. 19-261 should not be construed to require that counties
must provide ambulance services. See also: Bradley v. Cleaver,
150 Kan. 699 at 701-702 (1939) and Phelps v. Lodge, 60 Kan.
122 at 124 (1899), The State v. School District, 80 Kan. 667
at 669 (1909), Roth v. Ness County, 69 Kan. 667 at 668-669
(1904), Colby University v. Village of Cananduiqua, 69 F.
671 at 672-673 (1895), Western Distributing Co. v. Public
Service Commission, 58 F.2d 239 at 241 (1931), National Bank
v. City of St. John, 117 Kan. 339 at 342 (1924), Commonwealth
865 at 866.

In summary, boards of county commissioners are not required
to provide ambulance services either as a county function or
by contract.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Robert Vinson Eye
Assistant Attorney General

RTS:BJS:RVE:jm