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November 15, 1982

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ATTORNEY GENERAL OPINION NO. 82- 245

Michael D. Pepoon, Esq.
117 South Pearl
P. O. Box E
Paola, Kansas 66071

Re: Counties and County Officers -- Ambulance Service --
Obligations of County Providing County-wide Ambulance Service

Synopsis: K.S.A. 19-261 authorizes a county to provide ambulance service at public expense within such county, except in areas where adequate ambulance service is already being provided.

The geographical area served by any ambulance service need not follow the boundaries of any particular taxing district. However, absent an effective interlocal agreement executed pursuant to K.S.A. 12-2001 et seq., there is no apparent authority for a taxing district to provide ambulance service beyond its boundaries.

The board of county commissioners is responsible for determining whether a county-financed ambulance service will serve any particular area of the county. If an entire county receives adequate ambulance service from the county-financed ambulance service, the county is precluded from reimbursing any taxing district that provides a duplicate service.

An effective interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq. would serve to minimize and/or indemnify Miami County's civil liability exposure arising from the operation of an ambulance service pursuant to contract. Cited herein: K.S.A. 12-2901, 19-261.

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Dear Mr. Pepoon:

As retained counsel for the Board of County Commissioners of Miami County you pose a number of questions regarding ambulance service in Miami County and Attorney General Opinion No. 82-40. In Attorney General Opinion No. 82-40 it was determined that K.S.A. 19-261 authorizes a county to provide ambulance service within such county, except where adequate ambulance service is already provided. The opinion also cited K.S.A. 19-261 for the proposition that any taxing district which provides ambulance service within the county must be reimbursed for same with its proportionate share of the county general fund budgeted for ambulance service. We understand that the Spring Hill Rural Volunteer Fire Department, Inc., located in Johnson County, has provided ambulance service to a portion of northern Miami County since 1967. The present dispute involves whether Miami County is obligated to reimburse the Spring Hill Rural Volunteer Fire Department, Inc., for ambulance services.

Your first inquiry states:

"Would it have any bearing on your opinion [Attorney General Opinion No. 82-40] and in your interpretation of K.S.A. 19-261 if Miami County was providing ambulance service to the northern portion of Miami County prior to this area being serviced by the Spring Hill Rural Volunteer Fire Department? There is some question before the Commissioners as to which ambulance service began servicing the area initially and the adequacy of each respective service during this period of time."

As previously stated, K.S.A. 19-261 authorizes a county to provide ambulance service at public expense within such county, except in areas where adequate ambulance service is already being provided. Therefore, if the board of county commissioners authorized ambulance service for the northern portion of Miami County, such authorization requires a determination by the county commission that the northern portion of the county was not then receiving adequate ambulance service. The issue of which ambulance service commenced serving the subject area first is not germane to the county commission's duties and responsibilities under K.S.A. 19-261 et seq. Rather, the issue that must be resolved is whether the subject area was being adequately served at the time the board of county commissioners authorized the county-financed ambulance service in such area. If adequate ambulance service was being provided to the subject area by an entity not dependent on a county subsidy, the board of county commissioners

would not be authorized to establish and maintain a county-financed ambulance service to cover the identical area. See Robinson v. Board of County Commissioners, 210 Kan. 684, 691 (1972).

Your second inquiry states:

"Secondly, K.S.A. 19-261 states that reimbursement shall take place when adequate ambulance service is provided 'in any part of the county.' Does the area which is receiving the service have to be defined in any manner? Does it have to be a taxing district, township, or some other appropriately described area? Does it matter if several ambulance services are providing assistance to a 'part' of the County? Who within this part of the county determines which ambulance service should be provided and should this decision be resolved through an electoral process?"

It is our considered opinion that the area served by any ambulance service need not follow the boundaries of a taxing district. However, as stated in Attorney General Opinion No. 82-40, there is doubt regarding the statutory authority of a taxing district to provide ambulance service beyond its boundaries absent an effective interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq.

In response to your inquiry regarding multiple ambulance services providing service to the same part of the county, we direct attention to Robinson v. Board of County Commissioners, supra. There, the Court cited the provision of K.S.A. 19-261 which states: "The board of county commissioners shall not provide ambulance service under the provisions of this act in any part of the county which receives adequate ambulance service . . . ," and construes the purpose thereof to

"provide relief from double taxation to residents of a city, fire district, hospital district or other taxing subdivision which is already furnishing adequate ambulance service at public expense. The county is not to invade those areas with its service, and is to reimburse such a taxing subdivision its pro rata share of the county-wide taxes levied by the county for ambulance service." Id. at 689.

The legislative intent, as articulated in the above-quoted portion of Robinson, is to preclude multiple publicly-financed ambulance services operating in the same area.

Regarding who is responsible for determining which ambulance service will serve a particular area, we note that K.S.A. 19-261 vests the board of county commissioners with the authority to determine whether a county-financed ambulance service will operate in any particular area. See, also, Robinson, supra at 689-691. We find no authority for the proposition that an election be held to decide any issue relating to a county-financed ambulance service.

Your third inquiry states:

"Thirdly, if Miami County is currently, through the tax dollars of its citizens, providing an ambulance service from three cities within the county, and this service was adequate to protect all of the citizens of the county, would this make a difference in whether such reimbursement should take place? Can there be an unlimited number of ambulance services within the county operated by other taxing districts from various counties, with each district receiving its proportionate share of Miami County tax dollars?"

In responding to the first part of this question, we note that K.S.A. 19-261 provides, in part:

"The board of county commissioners shall not provide ambulance service under the provisions of this act in any part of the county which receives adequate ambulance service, but the county shall reimburse any taxing district which provides ambulance services to such district with its proportionate share of the county general fund budgeted for ambulance services within the county."

Here, it is appropriate to reiterate the previously-quoted excerpt from Robinson, supra, which construed the foregoing provisions of 19-261, as having the purpose of providing

"relief from double taxation to residents of a city, fire district, hospital district or other taxing subdivision which is already furnishing adequate ambulance service at public expense. The county is not to invade those areas with its service, and is to reimburse such a taxing subdivision its pro rata share of the county-wide taxes levied by the county for ambulance service." (Emphasis added.)
210 Kan. at 689.

From this interpretation, it may be concluded that, when a board of county commissioners determines to provide ambulance service within the county: (1) the county may not provide such service in any area of the county where adequate ambulance already is being furnished by a taxing subdivision at public expense; and (2) the county is required to reimburse a taxing subdivision which is already furnishing adequate ambulance service at public expense with its proportionate share of the county's budget for ambulance services.

In light of these conclusions, we have determined that, in answer to your specific question, the adequacy of the ambulance service currently provided by the county has no bearing upon the county's obligation under K.S.A. 19-261 to reimburse other taxing districts. In our judgment, the only considerations are (1) whether the taxing district was providing ambulance service at public expense within the county at the time the county began providing county-financed ambulance service and (2) whether the ambulance service being provided by such a taxing district is adequate.

Accordingly, in our opinion, a county is not required to reimburse a taxing district which was not providing adequate ambulance service at public expense within the county at the time the county began furnishing county-financed ambulance service. And as noted above, the determination of the adequacy of ambulance service being provided by any such taxing district rests in the sound discretion of the board of county commissioners. Thus, even though a taxing district is providing ambulance service within the county at public expense at the time the county begins furnishing such service, the county is neither precluded from duplicating such service nor required to reimburse such taxing subdivision, unless the county determines the service being provided by such taxing subdivision is adequate.

In response to your question whether Miami County must reimburse "an unlimited number of ambulance services . . . operated by other taxing districts from other counties," we again note that absent an interlocal agreement executed pursuant to K.S.A. 12-2901 et seq., no statutory authority exists for a taxing district to provide ambulance service beyond its boundaries. If such service is provided it would be incumbent on such taxing district to demonstrate the explicit authority (statutory, contractual or other) in order to be reimbursed. Arguably, the taxing district could show that the beneficiary county knowingly acquiesced in the provision of such service and that reimbursement is thereby authorized. However, this is essentially a factual matter that is beyond the scope of this opinion.

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Your next inquiry states:

"As far as I have been able to determine from my research there has been no case law interpreting K.S.A. 19-261. In your opinion with regard to interpreting this statute has there been any research or do you have an opinion as to what the intent of the legislature was in drafting the statute?"

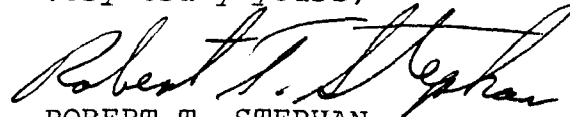
The only case law construing K.S.A. 19-261 et seq., that we are cognizant of is Robinson, supra. Additionally, this office has issued numerous opinions construing K.S.A. 19-261 et seq. However, in regard to your opinion request, we believe that Robinson is the controlling authority.

Finally, you inquire:

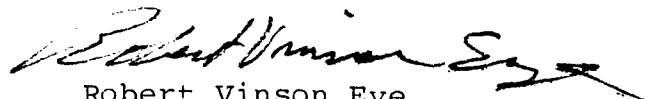
"In your opinion [No. 82-40] you state that if a county has decided to offer ambulance service, the county has a duty to provide ambulance service to all parts of the county or to enter into an agreement whereby such services are provided. Will such an agreement with another taxing district legally protect the county from any neglect of duty with respect to this 'part' of the county receiving ambulance service from another taxing district?"

We are hesitant to discuss the efficacy of any contract which prescribes the rights, obligations and liabilities of the parties to an ambulance service agreement without the opportunity to review the contract. However, we observe that a properly drafted interlocal agreement could be executed which would serve to minimize or indemnify Miami County's civil liability exposure arising from the operation of an ambulance service pursuant to contract.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Robert Vinson Eye
Assistant Attorney General

RTS:BJS:RVE:hle