



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 5, 1983

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 83- 67

Donna Voth
County Counselor
Shawnee County Courthouse
200 East Seventh
Topeka, Kansas 66603

Re: Townships and Township Officers -- Fire Protection --
Power to Provide Emergency Medical Treatment

Synopsis: The Topeka-Tecumseh Fire District, created pursuant to K.S.A. 80-1540 et seq., is without statutory authority to provide emergency medical care unrelated to the providing of firefighting services in its territorial district. Cited herein: K.S.A. 19-3623b, 19-3636a, 65-2891a, K.S.A. 1982 Supp. 80-1423, K.S.A. 80-1540, K.S.A. 1982 Supp. 80-1541, K.S.A. 80-1544, 80-1546.

* * *

Dear Ms. Voth:

As county counselor for Shawnee County, you have requested, on behalf of the Shawnee County Ambulance Advisory Board, our opinion on whether a township fire district, created pursuant to K.S.A. 80-1540 et seq., is prohibited from participating in, and expending funds for, an emergency medical care first response program in its territorial district. You inform us that Shawnee County is attempting to formulate a county-wide first response system and is desiring the Topeka-Tecumseh Fire Department to render emergency first aid to victims in situations not involving a fire-fighting function.

We are informed that Topeka Township and Tecumseh Township created a joint township fire district in 1966 pursuant to K.S.A. 80-1540 et seq. That statute provides that the governing board of the townships may create a fire district. Such

fire district may include any or all of such townships. The powers delegated to a joint fire district are set out in K.S.A. 1982 Supp. 80-1541, which provides in pertinent part:

"[T]he governing body of the fire district . . . shall have the authority to levy taxes or assessments, to enter into contracts, to acquire, and operate and maintain fire fighting equipment and to acquire and construct buildings to house the same and to do all things necessary to effectuate the purposes of this act."

In addition to the powers provided for in this section, the governing body of the fire district shall have any powers granted to a fire district under K.S.A. 1982 Supp. 80-1514a. K.S.A. 80-1544 further delineates the vested powers of the district, stating:

"The governing body of such fire district shall have full direction and control over the operation of such fire department and may select regular employees, provide for their compensation, and furnish quarters for such employees if deemed desirable; and may also provide for the organization of volunteer members of such department, to be compensated at a specified rate when attending fires, and may provide special clothing and equipment for such employees and volunteers, and may insure such employees and volunteers against accidental death and injury in the performance of their duties, and may do all other things necessary or desirable to maintain and operate such department so as to furnish fire protection for the inhabitants of such district" (Emphasis added.)

A township under Kansas law is a statutory creation (K.S.A. 80-101 et seq.), and "has only such powers and authority as may be conferred upon it by statute." Paul v. Topeka Township Sewage District, 199 Kan. 394, 399, 430 P.2d 228 (1967). Township Board of Ash Creek v. Robb, 166 Kan. 138, 199 P.2d 521 (1948). As the fire district is a separate governmental entity created pursuant to K.S.A. 80-1540, it has only those powers as are delegated to it by statute.

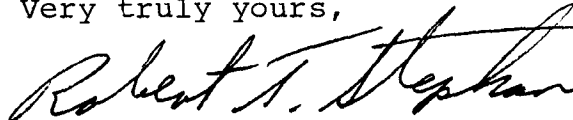
"In this state it has long been the rule that school districts and other subdivisions of the state have only such powers as are conferred upon them by statute, specifically or by clear implication, and that any reasonable doubt as

to the existence of such power should be resolved against its existence." (Citations omitted.) (Emphasis added.) Wichita Public Schools Employees Union v. Smith, 194 Kan. 2, 4, 397 P.2d 357 (1964). See also Gragg v. U.S.D. No. 287, 6 Kan. App. 2d 152, 627 P.2d 335 (1981).

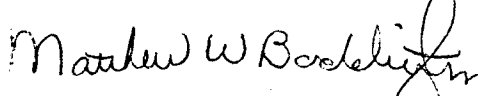
We have examined the case law of this and other jurisdictions and can find little authority for the proposition that the provisions of fire protection necessarily includes the rendering of emergency medical care unrelated to circumstances involving fires or explosions. Moreover, Kansas law provides for emergency medical care service programs pursuant to K.S.A. 65-2891a and specifically provides for counties and certain other governmental entities to deliver emergency medical care. See K.S.A. 19-3623b and 19-3636a. Additionally, there are separate provisions for the providing of ambulance services on a township level. K.S.A. 1982 Supp. 80-1423. No such authority is expressly granted township fire districts created pursuant to K.S.A. 80-1540 et seq., nor do we have reason to find that such is necessarily implied.

Therefore, we must concur with counsel for the Topeka-Tecumseh Fire District that such district is without statutory authority to provide emergency medical care in circumstances unrelated to the providing of firefighting services.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Matthew W. Boddington
Assistant Attorney General

RTS: BJS: MWB: hle