



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

July 8, 1988

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

ATTORNEY GENERAL OPINION NO. 88- 96

David E. Retter, City Attorney  
City of Concordia  
213 W. Sixth, P.O. Box 676  
Concordia, Kansas 66901

Re: Public Health--Emergency Medical Services--  
Counties

Synopsis: A county is not required to provide ambulance services. If the county does provide services, it may not do so in any part of the county in which a taxing district already provides ambulance services, but must reimburse the taxing district a proportionate share of funds determined pursuant to statute. Cited herein: K.S.A. 19-261; L. 1988, ch. 261, §§12, 13 (to be codified at K.S.A. 65-6112 and K.S.A. 65-6113).

\* \* \*

Dear Mr. Retter:

As City Attorney for the City of Concordia, you have requested our opinion concerning L. 1988, ch. 261 (1988 Subs. for H.B. 2639, to be codified at K.S.A. 65-6112 and K.S.A. 65-6113). That act allows municipalities, as defined by section 12(p) of the act, to establish, operate and maintain an emergency medical or ambulance service. Specifically, you inquire whether a county may defeat the duty to reimburse a taxing district within the county for expenses incurred by such taxing district operating an emergency medical or ambulance service by not budgeting either general fund or special levy moneys for ambulance services within the county.

Your question arises from the language of section 13 of the act. Subsection (a) authorizes a municipality to establish, operate and maintain an emergency medical or ambulance service. A municipality is defined by section 12(p) as a "city, county, township, fire district or ambulance service district." Funding for the service may be provided using money from the general fund or from a special fund for which a maximum three mill tax is levied pursuant to section 13(b). L. 1988, ch. 261, §13(a). Subsection (d) states in part:

"In the case of a county, the board of county commissioners shall not provide ambulance service under the provisions of this act in any part of the county which receives ambulance service, but the county shall reimburse any taxing district which on the effective date of this act provides ambulance services to such district with its proportionate share of the county general fund or special tax levy fund budgeted for ambulance services within the county. . . ." L. 1988, ch. 261, §13(d).

You ask whether the county could circumvent this section by not budgeting moneys for ambulance services from the general fund or special tax levy fund, even though the reimbursement provisions are preceded by mandatory language.

In Reeves v. Board of Johnson County Comm'rs, 226 Kan. 397 (1979), the Court applied the rule of statutory construction in holding that a duly noticed public hearing is a prerequisite to a township's zoning board's recommendation, stating,

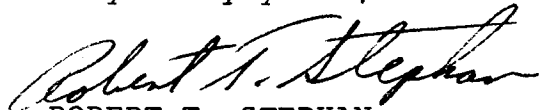
"[w]here a statute is susceptible to more than one construction, it must be given that construction which, when considered in its entirety, gives expression to its intent and purpose, even though such construction is not within the strict literal interpretation of the statute."  
226 Kan. at 402.

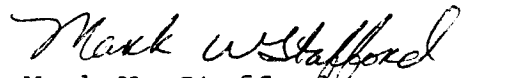
We believe that, in considering the act in its entirety, the apparent mandatory language can be placed in proper context. The act does not place a duty on counties to provide ambulance services. The language of section 13(a) is nearly parallel to the repealed language of K.S.A. 19-261 (Ensley, 1981). We

opined in Kansas Attorney General Opinion No. 82-163 that providing ambulance services was discretionary. We find no language in the new act which requires an alternate outcome. The reimbursement provisions apply only when the county actually provides such a service. Subsection 13(d) therefore requires reimbursement to the taxing district supplying the service that the county would be providing but for the other municipality's efforts. This avoids a duplication of effort on the part of various units of government. If, on the other hand, the county elects not to budget general fund money or special fund money derived from the authorized mill levy, then such determination would be based on the decision not to provide the service in the county, and subsection 13(d) would not apply.

In conclusion, it is our opinion that a county is not required to provide ambulance services. If the county does provide the services, it may not do so in any part of the county in which a taxing district already provides ambulance services, but must reimburse the taxing district a proportionate share of funds determined pursuant to statute.

Very truly yours,

  
ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

  
Mark W. Stafford  
Assistant Attorney General

RTS:JLM:MWS:bas