



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 89- 2

The Honorable Mary Jane Johnson  
State Representative, Thirty-Sixth District  
5321 Roswell  
Kansas City, Kansas 66104-2138

Re: Public Health--Emergency Medical Services--  
Ambulance Services; Personnel

Synopsis: No conflict exists between the staffing requirements for ambulance services imposed by L. 1988, ch. 261, sec. 35(b) (requiring an ambulance service be staffed by a minimum of one person, be it a doctor, doctor's assistance, registered nurse or certified ambulance attendant) and the requirements imposed by K.A.R. 1987 Supp. 109-2-7 (specifying minimum staffing for each of five classes of ambulance service). Cited herein: L. 1988, ch. 261, §§ 28, 35; K.A.R. 1987 Supp. 109-2-6, 109-2-7.

\* \* \*

Dear Representative Johnson:

As a member of the Emergency Medical Services Board you inquire whether there is a conflict between a statute and a regulation regarding ambulance vehicle personnel requirements. Specifically your question is whether L. 1988, ch. 261, sec. 35(b) requiring an ambulance service to be staffed by at least one physician, registered nurse or physician's assistant or a certified ambulance attendant, conflicts with K.A.R. 1987 Supp. 109-2-7 that specifies

minimum staffing for each of five classes of ambulance service.

Part (b) of section 35 states:

"Whenever an operator is required to have a permit, at least one person on each vehicle providing emergency medical service shall be an attendant certified as an emergency medical technician or a mobile intensive care technician, a person licensed to practice medicine and surgery, a registered physician's assistant or a registered professional nurse." (Emphasis added.)

K.A.R. 1987 Supp. 109-2-7 requires in pertinent part that each class of ambulance vehicle be staffed with a minimum of two attendants whose training requirements are consistent with the care required of that ambulance service. See K.A.R. 109-2-6, describing the five different classes of ambulance services and the level of care each provides.

It is clear that the statute and regulation cited above differ in that the statute imposes a minimum of one person, (trained as a technician or medical doctor, assistant or nurse), and the regulation imposes a minimum of two people for the staffing of an emergency vehicle. There is, however, no conflict between the statute and the regulation.

The power of an administrative agency to adopt rules and regulations is conferred by statute. To be valid a regulation must be within the authority conferred by and in harmony with legislative authorization. Willcott v. Murphy, 204 Kan. 640 (1970); State ex rel., Londerholm v. Columbia Pictures Corp., 197 Kan. 448 (1966). See generally, 1 Am.Jur.2d Administrative Law §92. The regulation in question does not purport to extinguish, modify or alter the statutory requirement imposed by section 35(b). Moreover, the law concerning the regulation of emergency medical services (L. 19887, ch. 261) does not prohibit the emergency medical services board, as the regulatory body, from imposing staffing requirements in addition to the minimum requirement imposed by statute.

Thus in our judgment no conflict exists that might invalidate the regulation or that would limit the ability of the board to regulate staffing pursuant to statutory authorization found in

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L. 1988, ch. 261, sec. 10. See also, L. 1988, ch. 261, sec. 28, making the staffing of ambulance services more explicitly a function of the board by legislative delegation of power.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Guen Easley  
Assistant Attorney General

RTS:JLM:GE:jm