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March 7, 1990

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ATTORNEY GENERAL OPINION NO. 90- 24

Colonel Donald L. Pickert
Superintendent
Kansas Highway Patrol
122 S.W. 7th
Topeka, Kansas

Re: State Departments; Public Officers and
Employees--Capitol Area Security and Mail
Services--Jurisdiction of Capitol Area Security
Patrol

Synopsis: Members of the capitol area security patrol may
exercise their law enforcement powers only on or
about property or buildings owned by the State with
limited exceptions. Cited herein: K.S.A. 8-1404;
8-1506; K.S.A. 1989 Supp. 22-2202; K.S.A. 22-2401a;
22-2408; 75-4503; 75-4506; 75-4509; 76-726; L.
1972, ch. 332, §§ 88, 91; L. 1976, ch. 394, § 5.

* * *

Dear Colonel Pickert:

As superintendent of the highway patrol, you are by statute
required to supervise and manage the capitol area security
patrol. K.S.A. 75-4503(a). In this supervisory capacity, you
request our opinion regarding the powers and duties of the
capitol area security patrol.

Your initial question concerns the jurisdiction of the capitol
area security patrol. K.S.A. 75-4503(b) provides as follows:

"Members of the capitol area security patrol shall have the powers and authority of peace, police and law enforcement officers while wearing the prescribed badge of office and while on duty on or about any state owned property or building in Shawnee county, Kansas, except the Kansas state reception and diagnostic center, the Kansas neurological institute, the youth center at Topeka, the Topeka state hospital, the state correctional-vocational training center, and property of the Kansas national guard." (Emphasis added).

You question whether the capitol area security patrol may exercise law enforcement functions on or about property or buildings operated or controlled by the State, or in which a state agency is housed, but which is not owned by the State.

In our opinion, capitol area security patrol officers may exercise law enforcement powers when on duty and wearing the appropriate badge, but only when on or about property or buildings actually owned by the State. In reaching this conclusion we have relied on statutory construction rules directing that we read provisions of the statute in pari materia with other provisions therein and with related provisions in other statutes. Easom v. Farmers Ins. Co., 221 Kan. 415, 421, 422 (1977); Flowers v. Marshall, 208 Kan. 900 (1972). The statutory provision in question lists specific properties and buildings which are excepted from the term "state-owned property" as used in that section. All of the properties currently listed are in fact owned by the State. Properties which have in the past been listed and subsequently removed from the list were also owned by the State. See L. 1976, ch. 394, § 5. Further, the same enactment which created the capitol area security patrol and limited its jurisdiction to state-owned property also added the language to what is now K.S.A. 75-4506 which prohibits parking on "state owned or operated property." L. 1972, ch. 332, §§ 88, 91 (emphasis added). Other statutes dealing with the jurisdiction of law enforcement officers specifically provide for the authority to exercise law enforcement functions on property owned, operated by or under the control of the entity for which the services are provided. K.S.A. 76-726(a)(i); 22-2401a(2)(a). We therefore believe the legislature intended to limit the jurisdiction of capitol area

security patrol officers to property and buildings owned by the State.

Your second question involves the authority of capitol area security patrol officers in the following situations:

"1. Follow-up investigations of criminal activities committed on or about State property. The situation arises when a CASP law enforcement officer may not be in fresh pursuit but, pursuant to a criminal investigation that occurred on or about State property, would develop a suspect or additional witnesses and would need to interview those individuals off of State property. The question is: 'What authority does the CASP law enforcement officer have in follow-up investigations once he is removed from on or about State property?'

"2. What is the authority of a CASP law enforcement officer in a primary response police operation to State property? The situation arises where CASP law enforcement officers patrol between Forbes Field, the Capitol Area Complex, and Historical Society. I believe the authority of CASP law enforcement officers and the protection afforded to law enforcement officers in operation of marked law enforcement vehicles while done in a reasonable manner (State v. Simpson, 11 Kan.App.2d) would be within the purview of exercising their authority on or about State property as long as they are responding as part of their police function to State property.

"3. What is the authority of a CASP law enforcement officer while between State properties and not in a primary response mode? This is routine police patrol driving back from Forbes Field to the Capitol Area Complex, and what authority they have as law enforcement officers."

In general, the conclusions reached above are responsive to these concerns. Capitol area security patrol officers have no more law enforcement powers than a private citizen would have when outside of their jurisdiction. This is not to say that a capitol area security patrol officer absolutely cannot interview witnesses off of state owned property in a follow-up investigation. As long as the officer clearly identifies himself as capitol area security and does not attempt to force the interview, we see no reason why he cannot conduct one. Such officer may not, however, arrest, serve warrants, or perform other functions in a law enforcement capacity.

[Compare K.S.A. 76-726(a)(2) and 22-2401a(3)(b) which

specifically authorize university police officers to investigate and arrest persons anywhere within the city where the officers' jurisdiction is located for violations occurring within their jurisdiction.]

As noted in your request letter, the question of authority in primary response situations appears to be covered by State v. Simpson, 11 Kan.App.2d 666 (1987) and K.S.A. 8-1506. K.S.A. 8-1506 provides as follows:

"(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

"(b) The driver of an authorized emergency vehicle may;

"(1) Park or stand, irrespective of the provisions of this article;

"(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

"(3) Exceed the maximum speed limits so long as such driver does not endanger life or property;

"(4) Disregard regulations governing direction of movement or turning in specified directions; and

"(5) Proceed through toll booths on roads or bridges without stopping for payment of tolls, but only after slowing down as may be necessary for safe operation and the picking up or returning of toll cards.

"(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of an audible signal meeting the requirements of K.S.A. 8-1738 and visual signals meeting

the requirements of K.S.A. 8-1720, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

"(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of reckless disregard for the safety of others."

"Authorized emergency vehicle" is defined by K.S.A. 8-1404 as "such fire department vehicles, police vehicles and ambulances as are publicly owned. . . ." Thus, if a capitol area security patrol officer is driving an authorized emergency vehicle when responding to an emergency call to perform official duties on state owned property, he is entitled to exercise the privileges set forth in K.S.A. 8-1506. When not in a primary response mode or if not driving an authorized emergency vehicle, the capitol area security officer has no more law enforcement authority outside of state owned property than does a private citizen.

You next ask whether K.S.A. 75-4503(c) and 75-4509 vest capitol area security patrol officers with authority to enforce Topeka municipal ordinances on state owned property, and whether capitol area security patrol officers may, under K.S.A. 22-2408, serve a written notice to appear in place of making an arrest in the circumstances delineated by that statute. K.S.A. 75-4503(c) provides that "[a]ll persons arrested by a member of the capitol area security patrol shall be turned over to the sheriff of Shawnee county, Kansas . . . except in cases of the violation of the ordinances of the city of Topeka, any such person may be turned over to the police department of the city of Topeka to be dealt with by it in the same manner as other persons arrested by police officers of the Topeka police department." K.S.A. 75-4509 provides that "[e]xcept in cases of violation of the ordinances of the city of Topeka, all prosecutions commenced for any violation by a person arrested by a member of the capitol area security patrol shall be brought in the district court of Shawnee county. . . ." We believe these statutes clearly authorize capitol area security patrol officers to enforce Topeka municipal ordinances on state owned property.

However, we believe Shawnee county sheriff's officers and Topeka police officers have concurrent jurisdiction to perform their respective responsibilities on such state owned property pursuant to K.S.A. 22-2401a, regardless of whether request for assistance has been made by the patrol. See Attorney General Opinion No. 82-274. Care should be taken by the different law enforcement entities not to disrupt the investigation and activities of others. K.S.A. 22-2408 provides in part:

"(1) Except as otherwise provided in subsection (6) of this section, whenever a law enforcement officer detains any person without a warrant, for any act punishable as a misdemeanor, and such person is not immediately taken before a magistrate for further proceedings, the officer may serve upon such person a written notice to appear in court."

"Law enforcement officer" is defined in K.S.A. 1989 Supp. 22-2202(13) as "any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof. . . ." Again, we believe capitol area security patrol officers clearly fall within this definition and thus may take advantage of the provisions of K.S.A. 1989 Supp. 22-2408.

In conclusion, members of the capitol area security patrol may exercise their law enforcement powers only on or about property or buildings owned by the State with limited exceptions.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General