



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 52

Steven W. Hirsch
Decatur County Attorney
P.O. Box 296
Oberlin, Kansas 67749

Re: Automobiles and Other Vehicles -- General
 Provisions; Registration of Vehicles -- Permanent
 Registration of City, County or Township Vehicles;
 Ambulances

Synopsis: County owned and operated ambulances that are used
 exclusively for governmental purposes may be
 permanently registered as county vehicles pursuant
 to K.S.A. 1989 Supp. 8-1,134. Cited herein:
 K.S.A. 1989 Supp. 8-1,134; 8-301; 12-801;
 19-1423; K.S.A. 1989 Supp. 45-221; K.S.A.
 58-3901; 66-104; 77-201; K.A.R. 92-51-41.

* * *

Dear Mr. Hirsch:

As Decatur County Attorney you request our opinion on whether K.S.A. 1989 Supp. 8-1,134 allows a county owned and operated ambulance to be permanently registered. K.S.A. 1989 Supp. 8-1,134 provides:

"(a) Each motor vehicle, trailer or semitrailer owned by any city, county or township of this state or by any agency or instrumentality of any such city, county or township and used exclusively for

governmental purposes and not for any private or utility purposes, which is not otherwise exempt from registration, shall be registered for a fee established by rules and regulations adopted by the secretary of revenue, except that such fee shall not exceed the actual cost of such registration. Such registration shall be permanent in nature and designed in such a manner as to remain with a vehicle for the duration of the life span of the vehicle or until the title is transferred to an owner who is not a city, county or township.

"(b) License plates issued for city, county or township vehicles shall be distinctive and shall contain the words city, county and township and there shall be no year date thereon.

"(c) Each city, county or township shall file an annual report with the division of vehicles identifying such vehicle registered under this section.

"(d) The secretary of revenue shall adopt rules and regulations necessary to carry out the provisions of this act."
(Emphasis added).

We understand that the primary issue is whether such a county owned and operated ambulance service is a utility.

Pursuant to K.S.A. 1989 Supp. 8-1,134, the department of revenue promulgated K.A.R. 92-51-41 (1989) which provides:

"(a) The fee for permanent registration of each motor vehicle, trailer or semitrailer owned by any city or county or by any agency or instrumentality of a city or county and used exclusively for governmental purposes shall be \$7.00.

"(b) Each annual report filed with the division of vehicles identifying vehicles required to be permanently registered

shall be on a form or format approved by the director of vehicles.

"(c) Each motor vehicle, trailer or semitrailer shall be registered by February 1, 1988. Refunds shall not be given for any unused portion of the vehicle's current registration period.

"(d) Any city or county or any agency or instrumentality of a city or county owning a motor vehicle which is used as an unmarked law enforcement vehicle shall register the vehicle under a political or taxing subdivision status." (Emphasis added).

Neither the language of the statute or the pertinent administrative regulations define "utility purposes". Thus, we must use statutory construction rules to determine the meaning of the term as used in K.S.A. 1989 Supp. 8-1,134.

K.S.A. 77-201 Second provides:

"In the construction of the statutes of this state the following rules shall be observed, unless the construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the statute:

. . . .

Second. Words and phrases shall be construed according to the context and the approved usage of the language, but technical words and phrases, and other words and phrases that have acquired a peculiar and appropriate meaning in law, shall be construed according to their peculiar and appropriate meanings."

Use of the term "utility", in its broadest sense, means of service to or for some beneficial purpose. See Blacks Law Dictionary 1386 (5th ed. 1979). A public utility is a service provided to the public. Id. at 1108. However, it may be presumed that all activities of a county or use of county vehicles serve or benefit the public. The public

purpose doctrine requires that all uses of public funds or property be for a valid public purpose. See 10 McQuillin, Municipal Corporations, § 28.12 (1990); 64 C.J.S. Municipal Corporations, § 1835 (1950). Pursuant to the public purpose doctrine, a county owned and operated ambulance must be used to benefit the public. Furthermore, K.S.A. 8-301 states that "no person or employee of the state or county or any governmental subdivision shall operate or drive or cause to be operated or driven any state, county, or other publicly owned automobile, automobile bus, motor bus, or other motor vehicle for private use or for private business or pleasure." Thus, because all county vehicles are subject to K.S.A. 8-301 and the public purpose doctrine, use of all county vehicles must in some way serve or benefit the county. If the broad definition of utility as "of service or benefit to" the county is applied, all county vehicles are used for utility purposes and thus do not qualify for permanent registration pursuant to K.S.A. 1989 Supp. 8-1,134. This statute clearly permits some county vehicles to be permanently registered. Therefore, we must determine the appropriate statutory meaning of utility purposes.

We are informed that the Department of Revenue considers a county ambulance a utility, and thus a vehicle used as an ambulance must be registered yearly. Such a distinction is based upon the payment of fees for this service. Fees paid by citizens for other county services involving use of a vehicle do not convert such services to a utility purpose. For example, a county engineer performs land surveys pursuant to K.S.A. 19-1423 and may receive a fee for those services. In performing such services, it is not uncommon for the county engineer to utilize a county vehicle. However, we do not find legal support for the argument that the payment of fees automatically converts a county activity into a utility purpose.

While not always presumed, administrative construction or interpretation is often shown great deference by the court. In Re Department of Energy Stripper Well Exemption Litigation, 520 F.Supp. 1232, Rev. 690 F.2d 1375, Cert. Den. 459 U.S. 1127, 74 L.Ed.2d 978, on remand 578 F.Supp. 586, certified question answered Exxon Corp. v. U.S. Department of Energy, 744 F.2d 98, Cert. Den. 469 U.S. 1077, 83 L.Ed.2d 515 (Kan. 1981). See also 82 C.J.S. Statutes, § 359 (1953). However, while considerable weight is given to the administrative construction of a statute, the final construction of a statute rests with the courts and administrative construction is not controlling where the

construction is unsupported by law or clearly erroneous.
Amoco Production Company v. Arnold, 213 Kan. 636
(1974).

We have been unable to locate legislative history discussing the specific meaning of "utility purposes" as used in K.S.A. 8-1,134. However, other Kansas statutes discuss utilities or public utilities. In general, all statutes are presumed to be enacted with full knowledge of existing law, and therefore, unless a contrary intent is expressed, the meaning and effect of statutes should be determined in connection with common law, the constitution, and other statutes. 82 C.J.S. Statutes, § 362 (1953). State v. Burney, 194 Kan. 292 (1965).


The unclaimed property act defines utility to mean "any person who owns or operates within this state, for public use, any plant, equipment, property, franchise or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam or gas." K.S.A. 58-3901(h). K.S.A. 1989 Supp. 45-221(a)(26) discusses the open records act as it applies to utility records. K.S.A. 12-801 et seq. discusses municipally owned utilities and encompasses the provision of electricity, water, gas or sewer services by a municipality. K.S.A. 66-104 defines a public utility for purposes of determining the jurisdictional authority of the Kansas Corporation Commission (KCC) and chapter 66 generally includes regulation of utility services to the public. Such regulated services include telephone, electricity or gas.

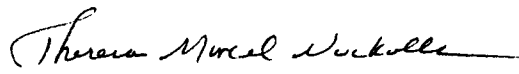
Other legal authority concerning utilities generally discusses the provision of such services as electricity, gas, highways and streets, telecommunications, and water or sewage systems. "A 'public utility' has been described as a business organization which regularly supplies the public with a commodity or service, such as electricity, gas, water, transportation, or telephone or telegraph service." 73B C.J.S. Public Utilities, § 2 (1983). See also Annot. 27 A.L.R. 4th 843 (1984). We have been unable to locate any legal authority which defines provision of ambulance service as a utility.

Absent some legal definition of utility which includes ambulance service, it is our opinion that a county owned and operated ambulance which is used exclusively for a

governmental purpose qualifies for permanent vehicle
registration pursuant to K.S.A. 1989 Supp. 8-1,134.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Theresa Marcel Nuckolls
Assistant Attorney General

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