



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. 92- 60

Bob McDaneld
Administrator
Board of Emergency Medical Services
109 S.W. 6th Street
Topeka, Kansas 66603-3805

Re: Public Health--Emergency Medical Services--
Definitions; Scope of Act

Synopsis: In the absence of any legislative intent to the contrary, a specialized nonemergency transportation service such as a "wheelchair service" that transports nonambulatory persons in a wheelchair or on a cot or gurney to a medical care facility is not subject to the act regulating emergency medical services, K.S.A. 1991 Supp. 65-6101 et seq., when the person being transported is not in need of medical care in transit. Conversely, when medical necessity warrants transportation by a service equipped and staffed to provide medical care in transit, a wheelchair service may not provide the transportation unless it is licensed as an ambulance service. Cited herein: K.S.A. 1991 Supp. 65-6112; 65-6120; 65-6121; 65-6123; 65-6125.

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Dear Mr. McDaneld:

As administrator of the Kansas board of emergency medical services you inquire whether the legislature intended the act regulating emergency medical services, K.S.A. 1991 Supp.

65-6101 et seq., to apply to specialized nonemergency services that provide transportation in a wheelchair, cot or gurney to persons who are not in need of medical care but do need specialized transportation.

You indicate that in most instances a nonambulatory person needs transportation to a medical facility for the purpose of laboratory tests, physical therapy or rehabilitation and routine follow up examinations. At issue is whether the transportation in question constitutes an ambulance service and thus must be licensed and regulated as such. See K.S.A. 1991 Supp. 65-6125 making it unlawful to operate an ambulance service without a permit.

The act defines an ambulance service as "any organization operated for the purpose of transporting sick or injured persons to or from a place where medical care is furnished, whether or not such persons may be in need of emergency or medical care in transit." K.S.A. 1991 Supp. 65-6112(c). To come within this definition an ambulance service must be (1) an organization (2) that operates for the purpose of transporting sick or injured persons, (3) to or from a place providing medical care and (4) it is irrelevant whether the person being transported needs either emergency medical care or other medical care. It is important to note at this point that the act is clearly not intended to prohibit any privately owned vehicle or aircraft from transporting persons who are sick, injured, wounded or otherwise incapacitated. K.S.A. 1991 Supp. 65-6136. Thus, the question concerns only organizations in the business of specialized nonemergency transportation for nonambulatory persons.

While a wheelchair service meets all of the four requirements of the definition of an ambulance service it is not enough to determine that based on a definition the legislature intended that the act, regulating emergency medical services, apply to wheelchair services. If the legislature intended the act to regulate the transportation of a nonambulatory person where no medical care is required then this intent will be found in the act as a whole rather than by application of a broad definition because words in a statute must be construed in light of their context and the purpose of the enactment.

Cardella v. City of Overland Park, 228 Kan. 698, 705 (1980); State ex rel. Stephan v. Martin, 227 Kan. 456 (1980), Watkins v. Hartsock, 245 Kan. 756 (1989); Natural Gas Pipeline Co. v. Commission of Revenue and Taxation, 163 Kan. 458 (1947).

The title of an act, though not a part of the statute, can be an aid in determining the scope of an act and thus legislative intent. The title of the act regulating ambulance services is an indicia of legislative intent for construing the act's scope. See Arrendondo v. Duckwall Stores, Inc., 227 Kan. 842, 846 (1980). The title of the bill is "an act concerning the regulation of emergency medical services. . . providing for the regulation of persons engaged in emergency medical service and ambulance service activities. . . ." L. 1988, ch. 261. It is clear that the act was intended to apply to the services provided by an ambulance. An ambulance (as distinct from an ambulance service defined above) is defined in K.S.A. 1991 Supp. 65-6112(b) as "any privately or publicly owned motor vehicle, airplane or helicopter designed, constructed, prepared and equipped for use in transporting and providing emergency care for individuals who are ill or injured."

The legislative history of this definition is very important in determining whether the legislature intended that the act apply to the specialized transportation in question. In 1990 the legislature amended the definition of an ambulance as follows:

"'Ambulance' means any privately or publicly owned motor vehicle, airplane or helicopter designed, constructed, prepared and equipped for use in transporting and providing emergency care for individuals who are ill, or injured or otherwise disabled; including any specially constructed and equipped motor vehicles, airplane or helicopter which is capable of providing life support services for extended periods of time. L. 1990, ch. 235, § 2.

Additionally written testimony to the house committee on local government, in support of 1990 S.B. 668 that effected the deletion of the scored language above, states that the deletion will clarify the definition of ambulance "to ensure that wheelchair vans and similar vehicles are not regulated by the board." It also states that the deletion of "disabled" in the definition of ambulance will ensure that the board "will not regulate hospitals, nursing homes and social service agencies which transport clients but do not provide medical treatment or emergency transportation." Minutes of the House Committee on Local Government, March 13, 1990, attachment I.

The legislative history of this definition indicates a legislative intent to preclude the act from regulating wheelchair services that provide only nonemergency transportation where no medical care is necessary.

Since our question deals only with nonemergency transportation, its definition is pertinent. In 1991, a year after the above amendments to the definition of "ambulance," the legislature amended K.S.A. 65-6112 to include the definition of nonemergency transportation as:

"the care and transport of a sick or injured person under a foreseen combination of circumstances calling for continued care of such person. As used in this subsection, 'transportation' includes performance of the authorized level of services of the attendant whether within or outside the vehicle as part of such transportation services." K.S.A. 1991 Supp. 65-6112(p).

In order to argue that the legislature intended that wheelchair services be covered by the act regulating emergency services, the legislature needed to have defined nonemergency transportation to include instances where no care was needed or required. Not only did the legislature not do so, it specifically added that nonemergency transportation included the provision of care. [We note in explanation that the legislature provided the definition in light of other legislative changes dealing with the provision of medical care during a nonemergency transportation by those licensed to provide such care. See Attorney General Opinion No. 90-134.]

In the absence of any legislative intent to have the act apply to the specialized transportation of persons who do not need medical care in transit, it is our opinion that the act regulating emergency medical services, K.S.A. 1991 Supp. 65-6101 et seq., does not apply.

Your second question is whether a wheelchair or nonambulatory specialized transportation service is subject to the act if it provides medical assistance or transports a person in need of medical care. The question of medical necessity must be made on a case by case basis and provides the factual premise with which to determine whether the transport service violates K.S.A. 1991 Supp. 65-6125, making

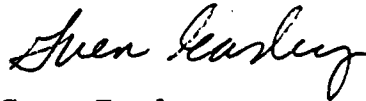
it unlawful to operate as an ambulance service without obtaining a permit pursuant to K.S.A. 65-6101 et seq. Accordingly, it is our opinion that when medical necessity warrants transportation by a service that is equipped and staffed to provide medical care, a wheelchair service may not provide the nonemergency transportation unless it is licensed as an ambulance service. Clearly the fact question of medical necessity must be whether the recipient's health will be endangered by the mode of transportation chosen.

An example that makes clear both sides of the issue presented here is to be found in the medicaid reimbursement regulations. See K.A.R. 30-5-107 (the scope of nonambulance medical transportation includes wheelchair services and requires that the least expensive means of transportation suitable to the recipient's medical need be used); K.A.R. 30-5-106 (the scope of ambulance service includes nonemergency transportation but limits reimbursement to instances where the recipient's condition is such that no other method of transportation is possible without endangering the health of the recipient).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General

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