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ATTORNEY GENERAL OPINION NO. 92- 124

The Honorable Tim Shallenburger
State Representative, First District
2027 Fairview
Baxter Springs, Kansas 66713

Re: Constitution of the State of Kansas--Legislative--
Delegation of Legislative Power

Public Health--Emergency Medical Services--Powers
and Duties of Emergency Medical Services Board

Synopsis: In delegating power to an administrative agency,
the legislature must set standards and guidelines
limiting and directing the agency's exercise of
power. Absent such standards, there is an
unconstitutional delegation of power. The
emergency medical services act, so far as it
concerns regulation of ambulance services, sets
forth sufficient standards. Cited herein: K.S.A.
1991 Supp. 65-6101; 65-6104; 65-6110; 65-6125;
65-6127; 65-6128; Kan. Const., art. 2, § 1.

* * *

Dear Representative Shallenburger:

As representative for the first district, you ask our opinion
whether the Kansas emergency medical services act, K.S.A. 1991
Supp. 65-6101 et seq., so far as it relates to regulation
of ambulance services, is an unconstitutional delegation of
legislative authority to an administrative agency.
Specifically you question whether there are sufficient

standards set forth in the act to govern the agency's exercise of discretion in setting requirements for ambulance services.

K.S.A. 1991 Supp. 65-6101 sets forth the powers and duties of the board of emergency medical services. In relevant part, it provides:

"(a) The bureau of emergency medical services established pursuant to K.S.A. 74-2127, and amendments thereto, is hereby abolished and all of the powers, duties and functions of such bureau are transferred to and conferred and imposed upon the emergency medical services board established pursuant to K.S.A. 1988 Supp. 65-6102. Except as provided by this act, all powers, duties and functions of the university of Kansas relating to emergency medical services are transferred to and conferred and imposed upon the emergency medical services board established pursuant to K.S.A. 1988 Supp. 65-6102."

A similar statement is found in K.S.A. 1991 Supp. 65-6104.

Several statutes specifically refer to regulation of ambulance services. K.S.A. 1991 Supp. 65-6125 mandates that a permit be obtained to operate an ambulance service. K.S.A. 1991 Supp. 65-6127 provides for the application for permit. Generally, the applicant must state the territory covered, the type of service, and a description of the equipment or facility to be used.

The statutes do not state, however, what type of equipment or staffing is necessary to obtain a permit. The statutes specifically leave that determination to the board. K.S.A. 1991 Supp. 65-6110 provides, in relevant part:

"(a) The board shall adopt any rules and regulations necessary for the regulation of ambulance services. Such rules and regulations shall include: (1) A classification of the different types of ambulance services; (2) requirements as to equipment necessary for ambulances and rescue vehicles; (3) qualifications and training of attendants; instructor-coordinators and first

responders; (4) requirements for the licensure and renewal of licensure for ambulances and rescue vehicles; (5) records and equipment to be maintained by operators, instructor-coordinators, first responders and attendants and (6) such other matters as the board deems necessary to implement and administer the provisions of this act."

K.S.A. 1991 Supp. 65-6128 expressly provides that a permit shall not be issued unless the requirements set forth in the rules are met.

Article 2, section 1 of the Kansas constitution provides: "The legislative power of this state shall be vested in a house of representatives and a senate." Kansas courts have held that this express constitutional delegation of legislative power to the legislature, limits the legislature's ability to delegate functions to administrative agencies.

Generally, the courts have permitted the legislature to delegate legislative power to an agency if the legislature sets forth standards by which the agency is to regulate. See, e.g. State, ex rel. v. Hines, 163 Kan. 300, 308 (1947); State, ex rel. v. Fadely, 180 Kan. 652, Syl. ¶ 7 (1957). In Wesley Medical Center v. McCain, 226 Kan. 263, 270 (1979), the court said, "[I]t has been held permissible to enact a law in general terms and delegate the power to apply it to an executive agency under standards and guidelines provided by the legislature."

The emergency medical services statutes seem to provide very little in the way of standards for the board to follow in adopting rules and regulations concerning ambulance services, other than a general direction that the board shall go forth and regulate. Unanswered, at least by the express terms of the act, are any limits on the detail and restrictions of the regulations.

In Guardian Title Co. v. Bell, 248 Kan. 146 (1991), the court discussed the detail in which standards must be set forth. The court said,

"We live in an increasingly complex society. To expect the legislature to have time and expertise to deal with

minute details statutorily is not realistic.

. . . .

"Where flexibility in fashioning administrative regulations to carry out statutory purpose is desirable in light of complexities in the area sought to be regulated the legislature may enact statutes in a broad outline and authorize the administrative agency to fill in the details.

. . . .

"The modern trend, which we ascribe to, is to require less detailed standards and guidance to the administrative agencies in order to facilitate the administration of laws in areas of complex social and economic problems." 248 Kan. at 153-54.

In upholding the constitutionality of the healing arts act against a challenge that it lacked sufficient standards and delegated too much power to the board of healing arts, the court held that standards can be implied from an act's purpose, and that the purpose of the healing arts act is to protect the public, which implies sufficient standards. Vakas v. Kansas Bd. of Healing Arts, 248 Kan. 589, 602 (1992).

The purpose of the emergency medical services act is ascertainable in reading the act as a whole -- to protect the public and provide readily available ambulance service of the highest possible quality. This purpose implies standards -- the board may only regulate for the benefit of the public. Regulations which are not rationally calculated to benefit the public are suspect.

In conclusion, although the emergency medical services act does not set forth detailed standards for the board to operate within in making rules and regulations for ambulance services, sufficient standards are implicit in the purpose of the act.

The act, so far as it grants the board power to regulate ambulance services, does not constitute an unlawful delegation of legislative power to an agency.

Very truly yours,



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