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November 10, 1992

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ATTORNEY GENERAL OPINION NO. 92-143

Stephen B. Plummer  
Sedgwick County Counselor  
Sedgwick County Courthouse  
525 North Main Street, Suite 359  
Wichita, Kansas 67203-3790

Re:           Automobiles and Other Vehicles--Uniform Act  
              Regulating Traffic; Powers of State and Local  
              Authorities--Designation of Authorized Emergency  
              Vehicles; Authority to Designate Certain  
              Privately-Owned Vehicles; Need to Designate  
              Publicly-Owned Vehicles

Synopsis:     The appropriate board of county commissioners may  
              designate any public or privately-owned vehicle as  
              an emergency vehicle upon receipt of an application  
              and finding that such designation "is necessary to  
              the preservation of life or property or to the  
              execution of emergency governmental functions."  
              Publicly-owned vehicles not grandfathered in  
              pursuant to L. 1992, ch. 141, § 4(b) must be  
              designated as emergency vehicles before they may be  
              operated with red lights and/or siren. Cited  
              herein: K.S.A. 8-2010, as amended by L. 1992, ch.  
              141, § 4; K.S.A. 8-2010 (Furse 1991) L. 1992, ch.  
              141, §§ 1, 2; K.A.R. 32-2-3; 32-2-4.

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Dear Mr. Plummer:

You request our opinion regarding 1992 House Bill No. 3157 (L. 1992, ch. 141) which altered the method for designating emergency vehicles.

The purpose of this bill was to shift the responsibility for designating privately-owned vehicles as emergency vehicles from the secretary of transportation to local county commissions. Minutes, House Committee on Transportation, March 2, 1992; Minutes, Senate Committee on Utilities and Transportation, March 25, 1992. In implementing this purpose, however, the language used in the amendments and new sections has raised several new concerns. Attorney General Opinion No. 92-142 addresses one such concern. Your request focuses on two others: "First, is the Board of County Commissioners authorized, pursuant to Section 141 of the 1992 Session Laws to designate vehicles owned by private corporations and used as funeral escorts as emergency vehicles? [; s]econd, are publicly owned fire department vehicles, police vehicles and ambulances required to obtain designations as emergency vehicles from the Board of County Commissioners?"

You state that prior to enactment of house bill 3157, there were no statutory restrictions on the types of vehicles the secretary of transportation had authority to designate as emergency vehicles, other than that the secretary had to find the designation was necessary to preserve life or property or to execute emergency governmental functions. See K.S.A. 8-2010 (Furse 1991). The secretary adopted a regulation to serve as a guideline (K.A.R. 36-2-3), but retained authority to make exceptions to the guidelines [K.A.R. 36-2-4(1), (n)]. The legislature lifted the language of K.A.R. 36-2-3 and, with amendments not pertinent to this discussion, placed it in new section 1 of house bill 3157. That section provides in part:

"(b) The following vehicles, upon approval by the board of county commissioners, may be designated as emergency vehicles:

"(1) Wreckers;

"(2) civil defense vehicles;

"(3) emergency vehicles operated by public utilities;

"4) the privately owned vehicles of firemen or volunteer firemen;

"(5) privately operated ambulances; or

"(6) the privately owned vehicles of police officers." L. 1992, ch. 141, § 1.

The provisions of K.A.R. 36-2-4(1) and (m) were not included in house bill 3157, however, K.S.A. 8-2010, as amended by section 4 of the bill, provides in part:

"(d) Any particular vehicle shall be designated, by the board of county commissioners in which such vehicle is located, as an authorized emergency vehicle upon the filing of an application pursuant to section 1 and a finding that designation of such vehicle is necessary to the preservation of life or property or to the execution of emergency governmental functions." L. 1992, ch. 141, § 4 (emphasis added).

Section 1(b) says county commissioners may designate the vehicles listed therein as emergency vehicles; it does not say the commissioners may designate only those vehicles listed. We do not believe the legislature intended section 1(b) of the bill to limit the types of vehicles which may be designated as emergency vehicles. Construing section 1(b) as a limit would arguably prevent designation of publicly owned police vehicles, fire department vehicles and ambulances as emergency vehicles. This clearly would be contrary to legislative intent and would be far from the stated purpose of house bill 3157. It is therefore our opinion that the board of county commissioners may designate any publicly or privately-owned vehicle as an emergency vehicle upon finding that such designation "is necessary to the preservation of life or property or to the execution of emergency governmental functions" once an application is properly filed.

Section 2 of house bill 3157 provides as follows:

"A person, partnership, association, corporation municipality or public official shall not operate, or cause to be operated upon a public highway, road or street within this state, a motor vehicle

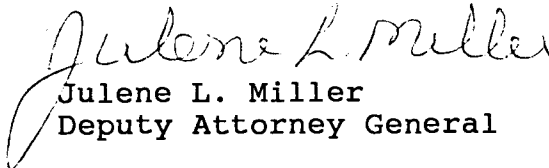
with a red light, siren or both unless the vehicle has been designated as an authorized emergency vehicle pursuant to K.S.A. 8-2010, and amendments thereto." L. 1992, ch. 141, § 2.

While sections 1 and 4 of house bill 3157 are susceptible to more than one construction, section 2 is not. We cannot use extrinsic evidence of legislative intent to overcome clear statutory provisions. See Farmers Co-op v. Kansas Bd. of Tax Appeals, 236 Kan. 632, 635 (1985); Brabander v. Western Co-op Elec., 248 Kan 914, 917 (1991). Thus, in our opinion section 2 requires designation of publicly-owned police vehicles, fire department vehicles and ambulances as well as privately owned vehicles used for emergency purposes. Vehicles in operation as emergency vehicles prior to July 1, 1992 were grandfathered in pursuant to L. 1992, ch. 141, § 4(b).

Very truly yours,



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RTS:JLM:jm