STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

CURT T. SCHNEIDER
ATTORNEY GENERAL

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

October 10, 1978

ATTORNEY GENERAL OPINION NO. 78-323

The Honorable Patrick J. Hurley
Majority Leader of the House
Kansas House of Representatives
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: Minimum Wage and Maximum Hours Law--Exemption--Emergency Medical Service Personnel

Synopsis: The Secretary of Human Resources has no authority to extend the exemption for law enforcement and fire protection personnel more broadly than that now set forth in K.A.R. 49-30-4.

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Dear Representative Hurley:

You inquire concerning certain regulations which have been adopted by the Secretary of Human Resources in the administration of the Kansas Minimum Wage and Maximum Hours Law, K.S.A. 1977 Supp. 44-1201 *et seq*. K.S.A. 1977 Supp. 44-1204 provides for a 46-hour work week, and required payment of one and one-half times the hourly wage rate for hours worked per week in excess of 46 hours. Special exception is made for persons who are "engaged in fire protection and/or law enforcement activities." In a regulation designed to clarify this provision, it is stated thus:

> "Fire protection activities shall include rescue and ambulance service functions which are part of the public agency's fire protection activities." K.A.R. 49-30-4(c).

Thus, employees of most emergency medical services units will not be exempt from the Act, which you suggest may appear to be "contrary to the intent of the law."

It is not clear that the 1977 legislature had any intention whatever regarding coverage of emergency medical service personnel. The legislature might, of course, have exempted all public safety employees. Instead, it chose more restrictive language, restricting the exemption to those engaged in "law enforcement" and "fire protection activities." Neither phrase aptly describes specialized, trained emergency medical care personnel, such as mobile intensive care technicians, as defined by K.S.A. 1977 Supp. 65-4301(c). If the legislature had wished to include them, it might have used more descriptive and explicit language, and probably would have if it had had such an intention.

It is also suggested that in adopting the act in 1977, the legislature borrowed much of its language from the federal Fair Labor Standards Act, 29 U.S.C. 201 *et seq.* In 1974, the Congress had extended coverage under that act to employees of state and local political subdivisions. In *National League of Cities* v. *Usery*, 426 U.S. 833, 49 L. Ed. 2d 245, 96 S. Ct. 2465, decided June 24, 1976, the Court held that the extension exceeded the powers of Congress under the Commerce Clause, because it displaced the states' freedom to structure integral operations in areas of traditional government functions. Although the extension to employees of states and local political subdivisions was held invalid for federal constitutional reasons, the 1977 Kansas legislature nonetheless found much of the federal act suited to its purposes. The adoption of statutory language from another jurisdiction does not, of course, in and of itself constitute a blanket adoption of all interpretive and other administrative regulations of that other jurisdiction which have been issued under the jurisdiction of its act. When and as particular questions arise, the administrative interpretation which is given a particular provision in the act by the foreign jurisdiction may be instructive regarding the interpretation which it may be given in the administration of the act in the adopting jurisdiction. In regulations adopted in 1974, found at 29 C.F.R. § 553.8, the Secretary states thus:

> "(a) Ambulance and rescue service employees of a public agency other than a fire protection or law enforcement agency may be treated as employees engaged in fire protection or law enforcement activities of the

> type contemplated by sections 7(k) and 13 (b)(20) if their services are substantially related to firefighting or law enforcement activities in that (1) the ambulance and rescue service employees have received special training in the rescue of fire and accident victims or firefighters injured in the performance of their firefighting duties, and (2) the ambulance and rescue service employees are regularly dispatched to fires, riots, natural disasters and accidents."

The language of this regulation itself recognizes that ambulance and rescue service employees are not engaged in fire protection or law enforcement activities. It provides for them to share the exemption accorded fire protection and law enforcement personnel only on the ground that their services are "substantially related" to firefighting and police protection. The matters of specialized training and dispatching practices seem little more than pretexts for exempting such employees. This regulation was not, so far as our research discloses, litigated in the federal courts prior to the *Usery* decision. Moreover, as a result of that decision, it was void and of no effect at the time the 1977 legislature enacted the Kansas Minimum Wage and Maximum Hours Law. Under these circumstances, it is difficult to treat it as suggestive of legislative intent regarding emergency medical service personnel.

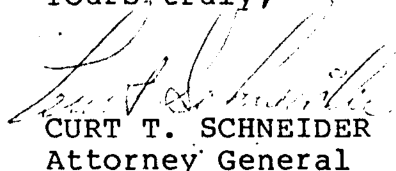
Indeed, it is not clear that the legislature had any intention whatever regarding coverage of emergency medical services personnel. Had the legislature specifically wished to exempt them from coverage, it would surely have used more explicit and descriptive language rather than restricting the exemption to those engaged in "law enforcement" and "fire protection" activities. Indeed, the exemption does not extend further, to those engaged in "substantially related activities." Absent language suggesting an express legislative intention, we can only resort to applicable rules of statutory construction. The Kansas Minimum Wage and Maximum Hours Law was enacted to ensure minimum standards regarding wages and hours of work which are deemed necessary for the health, efficiency and general welfare of workers. In applying the Act, it should be liberally construed in order to extend its protection to the furthest reaches in accordance with the apparent legislative purpose. *See. e.g., Brennan v. Plaza Show Store, Inc.*, 522 F.2d 843 at 846 (8th Cir. 1975). The protection of the

act should not be denied to any class or group of employees unless the basis for exempting them is clearly set forth in the act. It is argued that emergency medical services are substantially related to police and fire protection activities, and that they should share the exemption of employees engaged in those expressly exempt activities. Yet, the exemption in K.S.A. 1977 Supp. 44-1204 extends only to any employee "who is engaged in fire protection or law enforcement activities," and not to other employees who are engaged in other activities which are not themselves law enforcement or fire protection activities, but which are only related thereto.

The language of the existing regulation is somewhat circular. It provides that "[f]ire protection activities shall include rescue and ambulance service functions which are part of the public agency's fire protection activities. It is not clear how this language is to be construed and applied on a case-by-case basis. It has been objected that under this provision, the employees of emergency medical service units who have identical responsibilities will be treated differently for purposes of the exemption, depending upon whether the unit is under the administrative control of a fire department. Exemption under K.S.A. 1977 Supp. 44-1204(b) depends upon the nature of an employee's activities, and not upon the nature or identity of the employer. Thus, emergency medical personnel who are employed by a fire department, but have no fire protection responsibilities, are not exempt under that act. The existing regulation fails to address when and under what circumstances rescue and ambulance service functions will be deemed to be a part of a public agency's fire protection activities. Ordinarily, surely, a person who is trained and employed as a mobile intensive care technician to staff an emergency medical service program is unlikely to also have fire protection responsibilities. However, those determinations must be made in the administrative process of the Department.

In my judgment, applying general rules of statutory construction, it is my judgment that the Act does not provide a broader basis for exemption than permitted by the existing regulation. It is my opinion that employees of emergency medical service units, as defined by K.S.A. 1977 Supp. 65-4301 *et seq.*, do not by virtue of their training and responsibility to furnish emergency medical care in the course of their employment constitute employees who are engaged in fire protection and law enforcement activities, and that for this reason, the Secretary has no authority to extend the exemption to persons not clearly entitled thereto by express provisions of the act.

Yours truly,



CURT T. SCHNEIDER
Attorney General

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