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January 16, 1981

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ATTORNEY GENERAL OPINION NO. 81- 17

The Honorable David L. Webb
State Representative--Twenty-Seventh District
State Capitol - Room 174-W
Topeka, Kansas 66612

Re: Public Health--Emergency Medical Services--County Resolution
Fixing Scope of Emergency Medical Service to be Provided

Synopsis: The Johnson County Board of County Commissioners is authorized to restrict the scope of emergency medical services provided by the county to those circumstances in which a person's life is in danger. The ballot proposition approved by Johnson County voters authorizing the establishment of an emergency medical service does not restrict or limit the service to be provided, nor does it restrict or limit the authority or discretion of the board of county commissioners to determine the scope of the emergency medical service to be provided by the county. Cited herein: K.S.A. 1980 Supp. 19-261, K.S.A. 65-4301, 65-4302, 65-4304, 65-4305, 65-4309, 77-201, Second.

* * *

Dear Representative Webb:

You advise that in 1974 Johnson County voters adopted a proposition authorizing the levy of a tax for the establishment and operation of an emergency medical service as provided in K.S.A. 65-4301 et seq. In 1980, the board of county commissioners adopted a resolution restricting the service. Under the resolution, if a person's life is determined not

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to be in danger that person is not afforded transportation by the county emergency medical service. You inquire whether the ballot proposition authorized the restricted service or whether the voters established a general ambulance service for all residents of the county.

The proposition adopted by the Johnson County voters in 1974 provides as follows:

"Shall the following be adopted?

"Shall the Board of County Commissioners of Johnson County, Kansas be authorized to make an annual tax levy of not to exceed two (2) mills upon all of the taxable, tangible property of the county for the establishment, operation and maintenance of an emergency medical service as authorized by Senate Bill No. 328 of the 1974 session of the Legislature of the State of Kansas, Chapter 244, 1974 Session Laws of Kansas, K.S.A. 1974 Supp. 65-4301-09?"

Clearly, the language of the ballot proposition itself does not impose the above-noted restriction of the emergency medical service. Thus, it is necessary to examine the statutory authority, K.S.A. 65-4301 et seq. to determine whether the board of county commissioners is empowered to restrict the service, by resolution, as you have described.

K.S.A. 65-4301(a) defines "emergency medical service" as

"a service which provides for the effective and coordinated delivery of such emergency care as may be required by an emergency, including transportation of individuals by ground or air ambulances and the performance of authorized emergency care by a person licensed to practice medicine and surgery, a licensed professional nurse, a registered physician's assistant, a crash injury management technician, an emergency medical technician or a mobile intensive care technician." (Emphasis added.)

K.S.A. 65-4302(a) authorizes the establishment of an emergency medical service. That section provides:

"The board [of county commissioners] or governing body [of any city] may establish, operate and maintain an emergency medical service as provided in this act as a county or city function and may contract with any person

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or governmental entity for the purpose of furnishing emergency medical services within or without the boundaries of the county or city upon such terms and conditions and for such compensation as may be agreed upon which shall be payable from the county or city general fund." (Emphasis added.)

This act (K.S.A. 65-4301 et seq.) is to be distinguished from those statutes which authorize counties to establish on ambulance service as a county function (K.S.A. 1980 Supp. 19-261 et seq.). Indeed, the legislature is careful to make the distinction in K.S.A. 65-4309. The apparent legislative purpose under the act in question is to provide for the furnishing of emergency medical services, something more than the transportation of sick and injured persons to health care facilities.

The act does not define the term "emergency," and we have found no judicial construction of the term by the Kansas courts as it is used in the statutes in question. Thus, the rule of K.S.A. 77-201, Second is applicable:

"Words and phrases shall be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such peculiar and appropriate meaning."

An emergency is "an unforeseen occurrence, sudden and urgent occasion for action." American College Dictionary (1954 Edition), p. 393. It is "an unforeseen combination of circumstances or the resulting state that calls for immediate action; . . . a pressing need." Webster's Third New International Dictionary (Unabridged Edition, 1968), p. 741. See, also, Trinity Universal Insurance Company v. The Farmers Co-operative Exchange of Morland, 171 Kan. 501, 504 (1951).

By restricting emergency medical services provided in Johnson County to situations in which life is in danger, the board of county commissioners has, in effect, defined the term "emergency." We note that the board has express authority to define the scope of emergency service to be provided, and it is our opinion that the board's definition of "emergency" and concomitant restriction of service is not clearly contrary to the foregoing definitions or beyond the scope of the county's statutory authority.

K.S.A. 65-4304 provides:

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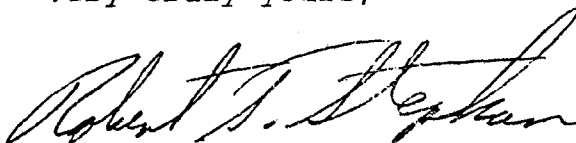
"In addition to other powers set forth in this act, the board [of county commissioners] shall have the power:

"(a) To acquire by gift, bequest, purchase or lease from public or private sources, and to plan, construct, operate and maintain the services, equipment and facilities which are incidental or necessary to the establishment, operation and maintenance of an emergency medical service." (Emphasis added.)

In addition, K.S.A. 65-4305 directs the board to "establish a minimum set of standards for the operation of such service, for its facilities and equipment, and for the qualifications and training of personnel."

Accordingly, in consideration of the foregoing authorities, and because of the legislature's distinction between general ambulance services and emergency medical services, we conclude that the Johnson County Board of County Commissioners is authorized to restrict the scope of emergency medical services provided by the county to those circumstances in which a person's life is in danger. The ballot proposition approved by Johnson County voters authorizing the establishment of an emergency medical service does not restrict or limit the service to be provided, nor does it restrict or limit the authority or discretion of the board of county commissioners to determine the scope of the emergency medical service to be provided by the county.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJS:SC:pf