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June 30, 1981

ATTORNEY GENERAL OPINION NO. 81- 148

Edward C. Redmon
State Fire Marshall
109 West Ninth, Suite 203
Topeka, Kansas 66612

Re: Townships -- Fire Protection -- Color of Fire
Fighting Vehicles

Synopsis: Two statutes concerning fire departments in townships, K.S.A. 80-1518 and 80-1906, provide that fire department vehicles operated by the township are to be given the right of way on public highways, provided that, among other requirements, the vehicle is painted red. A third statute imposing similar requirements, K.S.A. 80-1505, was repealed in 1978. While repeal by implication is not favored, in view of the direct conflict between the two remaining statutes and the more recently-enacted K.S.A. 8-1530 and 8-1541 (regarding the duty of motorists and pedestrians to yield to any authorized emergency vehicle making use of prescribed warning devices), the color requirement contained in the former is without force and effect. Cited herein: K.S.A. 8-1404, 8-1530, 8-1541, 80-1505 (repealed by L. 1978, ch. 424, §2), 80-1518, 80-1906.

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Dear Mr. Redmon:

As Fire Marshall for the State of Kansas, you request our opinion on a matter which concerns the continuing effect of two statutes, K.S.A. 80-1518 and 80-1906. Specifically, you wish to know the effect of the requirement contained therein concerning the color of township fire department vehicles.

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Both of the statutes you cite appear in chapter 80 of the Kansas Statutes Annotated, which concerns the organization, powers and duties of townships. K.S.A. 80-1518 is part of an act (L. 1947, ch. 482) which empowers townships having a population of more than 10,000 outside the limits of any incorporated city to create a fire protection district. The statute itself states:

"District fire departments shall have the right of way on public highways, both inside and outside city limits, when going to or returning from a fire when operating under this act: Provided, The vehicle is equipped with a fire siren in good working order and the siren is sounded at frequent intervals and always two hundred feet before reaching any intersection of highways: And provided further, Such vehicle is painted red. Such right of way shall also extend to the use of the highway when fighting fires." (Emphasis added.)

K.S.A. 80-1906 is identical with the above, save that the word "district" is replaced by "township." Like K.S.A. 80-1518, 80-1906 is part of an act (L. 1939, ch. 348) which concerns a limited class of townships, namely those which are adjacent to any city of the first class with a population of not less than 60,000 nor more than 200,000.

As you further note, a third statute, K.S.A. 80-1505, that contained the same requirements of the previous two statutes was repealed in 1978 (L. 1978, ch. 424, §2). That statute appeared in yet another act (L. 1931, ch. 113) which was tailored to fit only certain townships, as the terms of the act were limited to townships in counties with specified population and valuation ranges. You now inquire what effect, if any, this repeal has upon the other two statutes, and what effect the color requirement contained therein has upon fire fighting vehicles operated by other local units of government such as cities and counties.

It may initially be noted that the two statutes in question apply only to vehicles operated by certain townships. Moreover, we would further conclude that even this limited effect has been curtailed. While only one of the three statutes which provided for the imposition of a color requirement has been repealed, in our opinion it is necessary to find that the other two, at least in this respect, have been repealed by implication. While such a result is not favored by the law [City of Overland Park v. Nikias, 209 Kan. 643, 646 (1972)], we believe it to be necessary here.

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We reach this conclusion in light of K.S.A. 8-1530 and 8-1541, which are part of the Uniform Act Regulating Traffic on Highways as adopted by the 1974 Kansas Legislature. Both of these statutes concern yielding to authorized emergency vehicles, with the first stating:

"(a) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal meeting the requirements of subsection (d) of K.S.A. 8-1738 and visual signals meeting the requirements of K.S.A. 8-1720, or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right-of-way and shall drive immediately to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

"(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway."
(Emphasis added.)

K.S.A. 8-1541 contains the same language as is underscored above, and requires pedestrians to yield the right of way to such vehicles. "Authorized emergency vehicle," it should be noted, is defined by K.S.A. 8-1404 to include publicly owned ambulances, fire department and police vehicles. Nowhere in the Uniform Act do there appear requirements concerning the color of such vehicles.

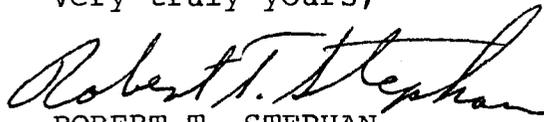
In that K.S.A. 8-1530 and 8-1541 deal with the yielding of right of way to fire department vehicles, they must be read in pari materia with K.S.A. 80-1518 and 80-1806, and, if possible, reconciled into a workable harmony. Callaway v. City of Overland Park, 211 Kan. 646 (1973). In our opinion, it is impossible to do so in this case, for the statutes which appear in chapter 8 provide that all authorized emergency vehicles which are equipped with proper audible and visual signals be given the right of way by every other vehicle, with the statutes silent as to the emergency vehicle's color.

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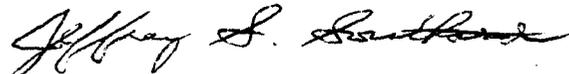
As township fire department vehicles are included in the definition of authorized emergency vehicles, they are within the scope of K.S.A. 8-1530 and 8-1541, regardless of their color. Additionally, as a practical matter it would be impossible to expect motorists to draw a distinction between those emergency vehicles which must be red and those which can be any color (given the prescribed warning devices), when they make the decision whether to yield the right of way. As the statutes in chapter 8 are the most recent, as well as the most uniform, enactment by the legislature on this subject, they should control and so avoid the above, absurd result which would otherwise occur if the color requirement of K.S.A. 80-1518 and 80-1806 was upheld. See Thomas v. Bd. of Township Trustees of Salem Township, 224 Kan. 539 (1978).

In conclusion, two statutes concerning fire departments in townships, K.S.A. 80-1518 and 80-1906, provide that fire department vehicles operated by the township are to be given the right of way on public highways, provided that, among other requirements, the vehicle is painted red. A third statute imposing similar requirements, K.S.A. 80-1505, was repealed in 1978. While repeal by implication is not favored, in view of the direct conflict between the two remaining statutes and the more recently-enacted K.S.A. 8-1530 and 8-1541 (regarding the duty of motorists and pedestrians to yield to any authorized emergency vehicle making use of prescribed warning devices), the color requirement contained in the former is without force and effect.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
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RTS:BJs:JSS:hle