STATE OF KANSAS

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July 28, 1982

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ATTORNEY GENERAL OPINION NO. 82- 163

Mr. Steven W. Rogers
City Attorney
314 North 7th Street
Fredonia, Kansas 66736

Re: Counties and County Officers -- Ambulance Service -- Discretion to Provide

Synopsis: K.S.A. 19-261 allows boards of county commissioners to provide ambulance services as a county function. K.S.A. 19-261 also allows boards of county commissioners to contract with any city, person, firm, or corporation for the furnishing of ambulance services. However, boards of county commissioners are not required to provide ambulance services either as a county function or by contract. Cited herein: K.S.A. 19-261, 19-262.

* * *

Dear Mr. Rogers:

You have requested an opinion from this office regarding whether K.S.A. 19-261 requires a county to provide ambulance services.

K.S.A. 19-261 states in pertinent part:

> "The board of county commissioners of any county <u>may</u> provide as a county function . . . ambulance services within all or any part of their respective counties upon such terms and conditions, and for such compensation as may be agreed upon which shall be payable from the county general fund." (Emphasis added.)

not have been utilized in K.S.A. 19-262. Rather, the legislature would have utilized the term "when" or other unequivocal language.

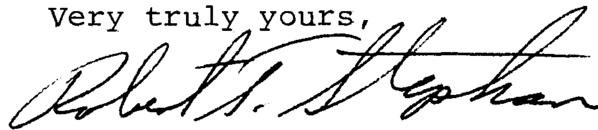
We are mindful that in certain instances the term "may" is construed to mean "shall" or "must." In such cases it is considered that the legislative intent is that the power granted in permissive form is mandatory in substance. City of Wauwatosa v. County of Milwaukee, 125 N.W.2d 386 at 398 (Wis., 1963). The court in Gleason v. Sedgwick County, supra, stated that

> "may means must only in cases where public interests and rights are concerned, and where the public or third persons have a claim de jure that the power be exercised." Id. at 635.

It is our opinion that the test set out in Gleason v. Sedgwick County is not satisifed in the present context because no de jure or independent claim of right exists vis a vis the availability of government sponsored ambulance services. Therefore, K.S.A. 19-261 should not be construed to require that counties must provide ambulance services. See also: Bradley v. Cleaver, 150 Kan. 699 at 701-702 (1939) and Phelps v. Lodge, 60 Kan. 122 at 124 (1899), The State v. School District, 80 Kan. 667 at 669 (1909), Roth v. Ness County, 69 Kan. 667 at 668-669 (1904), Colby University v. Village of Cananduigua, 69 F. 671 at 672-673 (1895), Western Distributing Co. v. Public Service Commission, 58 F.2d 239 at 241 (1931), National Bank v. City of St. John, 117 Kan. 339 at 342 (1924), Commonwealth v. Woodring, 137 A. 635 at 639, and State v. Morgan, 112 So. 865 at 866.

In summary, boards of county commissioners are not required to provide ambulance services either as a county function or by contract.

Very truly yours,



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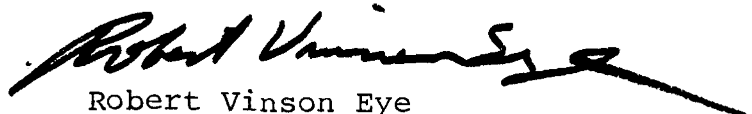

Robert Vinson Eye
Assistant Attorney General

RTS:BJS:RVE:jm