



STATE OF KANSAS

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ATTORNEY GENERAL

August 3, 1984

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ATTORNEY GENERAL OPINION NO. 84- 78

E. P. Moomau
Assistant Superintendent
Kansas Highway Patrol
122 SW Seventh Street
Topeka, Kansas 66603

Re: Public Health -- Emergency Medical Services -- Attendants Certificates; Temporary Certificates

Synopsis: K.S.A. 65-4321, as amended by L. 1984, Ch. 244, prohibits the renewal of a temporary certificate issued pursuant to its terms. The statute does not prohibit the issuance of temporary certificates to persons who have held temporary certificates in the past but who do not presently hold such certificates. The absence of such a prohibition and the overriding public interest in the adequacy of emergency medical services in a certain area of Doniphan County compels the conclusion that temporary certificates may be issued to certain ambulance attendants who have held such certificates in the past but who do not presently hold such a certificate. The issuance of temporary certificates must be in compliance with the requirements of K.S.A. 65-4321, as amended, and no such certificate may issue to a person who is not enrolled in or who will not be enrolled in the course of instruction necessary to become a certified attendant under Kansas law. Cited herein: K.S.A. 65-431 as amended by L. 1984, Ch. 244; K.S.A. 1983 Supp. 65-4326; K.S.A. 48-925; 48-932.

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Dear Mr. Moomau:

You have requested an opinion from this office on the proper interpretation of K.S.A. 65-4321 (as amended by L. 1984, Ch. 244)

and K.S.A. 46-932. Your request arises from a situation in Doniphan County, Kansas. We are informed that an area of Doniphan County is currently served by an ambulance service based in St. Joseph, Missouri. The St. Joseph Ambulance Service has been operating in Doniphan County for approximately two years.

In order to provide service and be licensed as a Type I ambulance service under Kansas law and regulations, the ambulance must be staffed with a Kansas certified Emergency Medical Technician (EMT) and a Kansas certified Mobile Intensive Care Technician (MICT). See K.A.R. 28-40-66(a)(1) and (2). In order for an EMT or MICT to be certified in Kansas, he or she must comply with the requirements of K.S.A. 65-4321, as amended by L. 1984, Ch. 244. That section requires a specified number of hours of training and successful completion of an examination prescribed by the Director of emergency medical services, who is appointed by the superintendent of the Kansas Highway Patrol, pursuant to L. 1984, Ch. 244, §2. The director may issue temporary certificates to persons who have not qualified for an attendant's certificate when:

"(1) The operator for whom such person serves as an attendant cannot comply with the provisions of subsection (b) of K.S.A. 65-4326 and amendments thereto without the issuance of a temporary certificate to such person, and there is no other person or municipality providing an ambulance service within the territory which is or will be served primarily by such operator; and

"(2) such attendant is enrolled or will be enrolled in the eighty-one-hour course of instruction required of regularly certified attendants.

"A temporary certificate shall be effective for one year from the date of its issuance and shall not be renewed." K.S.A. 65-4321, as amended by L. 1984, Ch. 244 (emphasis added).

We are informed that presently 13 members of St. Joseph's staff have temporary permits which expire on August 5, 1984, and that they have not completed the necessary steps to become Kansas certified attendants. You ask whether it would be permissible to extend the temporary permits for a period of time sufficient to allow the attendants to become certified in Kansas.

The statute clearly prohibits any renewal or extension of the temporary certificates after one year. We are unable to find in the statutes or in general principles of law any authority which would permit an extension of those permits. The power to take

certain reasonable steps as may be necessary for the effective exercise of the express powers and duties imposed by a statute may be implied [Edwards County Comm'rs v. Simmons, 159 Kan. 41, 53 (1944)], but such implied power does not permit acts which are directly contrary to the express directions of the applicable statutes. Implications of powers must not be extended beyond the fair inferences which may be gathered from each circumstance. In this case, it is our opinion that such inferences may not be extended to permit noncompliance with statutory requirements.

You also suggest the possibility of issuing temporary permits to personnel on the St. Joseph staff who were temporarily certified a year ago, but who do not presently hold temporary certificates. We note that these certificates also expired without compliance with the requirements of K.S.A. 65-4321(d)(2), as those members of St. Joseph's staff are not presently certified in Kansas. While the statute prohibits renewal of a temporary certificate, it does not, in our opinion, prevent the director from issuing temporary certificates to persons who do not presently hold such certificates, but who have held them in the past. This conclusion is qualified by the clear requirements of K.S.A. 65-4321(d)(1) and (2). The director's discretion to issue such permits is dependent upon compliance with these requirements. Thus, it must be found that St. Joseph's cannot comply with the requirements of K.S.A. 65-4326(b) (as amended by L. 1984, Ch. 244). That section provides that whenever an ambulance operator is required to have a permit (See K.S.A. 1983 Supp. 65-4317), at least one attendant on the ambulance shall be a certified EMT or MICT pursuant to 65-4321, a licensed physician, a registered physician's assistant or a registered nurse. Additionally, it must be found that the ambulance service in question is the only service available in the territory. Finally, and most importantly in this context, a temporarily certified attendant must be enrolled or about to enroll in the course of instruction required of regularly certified Kansas attendants.

Thus, while the statute does not prohibit the issuance of temporary certificates to persons who have held but do not presently hold temporary certificates, we caution that such authority must not be used as a subterfuge to defeat the educational requirements and protective purpose of the Kansas law. It is most unfortunate that the past two years of temporary certification of St. Joseph staffers has been allowed to fail to accomplish its purpose, particularly in view of the importance of this issue to the citizens of the area. While a strong argument may be made that to permit the issuance of temporary certificates to persons who have held but do not presently hold such certificates is contrary to the spirit and purpose of the law, we find that this concern is overshadowed by the absence of a specific statutory prohibition and the overriding concern for the protection of the public health

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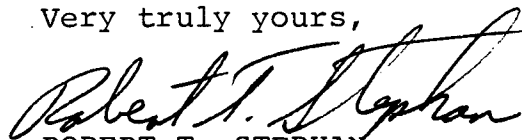
and welfare. We again caution that the issuance of temporary certificates to those St. Joseph staffers who do not presently hold certificates must comply with the requirements of K.S.A. 65-4321 (d)(1) and (2), as amended.

Although we believe this conclusion should resolve the issue, we would like to briefly address another alternative raised by your request. You indicate that Doniphan County officials have asked whether the use of a local disaster designation under K.S.A. 48-932 would allow for the suspension of regulatory statutes in the same manner as a disaster designation made by the governor under K.S.A. 48-925(c).

The clear answer to this question is no. Leaving aside the issue of whether this situation qualifies as a disaster under K.S.A. 48-904(d), we note that the Kansas Emergency Preparedness for Disasters Act provides separate and distinct grants of power to the governor and to local officials. The language used to enable the governor to act under K.S.A. 48-925 does not refer to parties other than the governor for the exercise of the granted powers. Attorney General Opinion No. 81-130 (which is attached) addressed this issue and concluded that "because local officials are granted a separate mechanism for action during disaster emergencies, we must conclude that the powers delegated in [K.S.A. 48-925] do not extend by implication to officials other than the governor."

In any event, as discussed earlier, it appears that the difficulties in Doniphan County regarding the provision of ambulance service may be resolved without resort to such dramatic measures. Should you have any further questions, please feel free to contact this office.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
Assistant Attorney General

RTS:JSS:MFC:crw

cc: Carol Hedges
Governor Carlin's Office