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ATTORNEY GENERAL OPINION NO. 92- 77

Bob McDanel, Administrator
Kansas Board of Emergency Medical Services
109 S.W. 6th Street
Topeka, Kansas 66603-3805

Re: Public Health--Emergency Medical Services--Permit
to Operate Ambulance Service; Applicability of Act
to Ambulance Services Operated by State Institutions

Synopsis: An ambulance service that transports persons in
need of medical care and which is operated by a
Kansas state institution must obtain a permit in
compliance with the act regulating emergency
medical services. Cited herein: K.S.A. 1991 Supp.
65-6101; 65-6125; 65-6136; 77-201.

* * *

Dear Mr. McDanel:

As administrator of the Kansas board of emergency medical
services you inquire whether the legislature intended that
state institutions operating ambulance services to transport
persons in need of medical care must obtain a permit from the
board to operate an ambulance service.

You indicate that your question concerns true ambulance
services, not "wheelchair services" transporting persons not
in need of medical care, which this office recently opined are
exempt from licensing requirements. See Attorney General
Opinion No. 92-60.

Licensing of ambulance services is covered by K.S.A. 1991 Supp. 65-6101 et seq. K.S.A. 1991 Supp. 65-6125 provides:

"It shall be unlawful for any person or municipality to operate an ambulance service within this state without obtaining a permit pursuant to this act."

For a state institution to fall under this section's requirements, the institution would have to be considered a "person."

K.S.A. 1991 Supp. 77-201, which sets forth rules of statutory construction, provides in part:

"In the construction of the statutes of this state the following rules shall be observed, unless the construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the statute:

. . . .

"Thirteenth. 'Person' may be extended to bodies politic and corporate."

The Kansas Supreme Court has interpreted the word "person" in other statutes to include governmental entities. See, e.g., City of Kansas City v. Board of Commissioners, 213 Kan. 777, 780.

Our analysis then, must turn to whether including state institutions within the definition of "persons" is consistent with the intent of the legislature or repugnant to it.

K.S.A. 1991 Supp. 65-6136 limits the scope of the act regulating emergency services. This section provides:

"Scope of act. (a) Nothing in this act shall be construed:

"(1) To prevent the operation of a police emergency vehicle;

"(2) to affect any statute or regulatory authority vested in the department of

transportation concerning automotive equipment and safety requirements;

"(3) to prohibit any privately owned vehicles and aircraft not ordinarily used in the ambulance service business from transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless;

"(4) to prevent any vehicle from being pressed into service as an ambulance when the operator determines an emergency exists and provides written notification to the board within 72 hours after the use of such vehicle; or

"(5) to prohibit any ambulance lawfully operating under the laws of a state adjoining Kansas from providing emergency transportation of a patient from a municipality not otherwise served by an ambulance service located in Kansas to a location within or outside the state of Kansas when the governing body of such municipality declares a hardship. The governing body or board shall notify the board 30 days prior to the initiation of such out-of-state service.

"(b) Ambulances owned and operated by an agency of the United States government shall be exempt from the provisions of this act.

"(c) Any ambulance based outside of this state receiving a patient within the state for transportation to a location within this state or receiving a patient within this state for emergency transportation to a location outside this state shall comply with the provisions of this act except when such ambulance is rendering service in the case of a major catastrophe, such ambulance is making a prearranged hospital-to-hospital transfer or except as otherwise provided by rules and regulations adopted by the board."

K.S.A. 1991 Supp. 65-6136 does not expressly contain an exclusion for state institutions. A general principle assisting in statutory construction is that the express mention of one thing implies the omission or exclusion of others, so long as the implied exclusion does not otherwise offend legislative intent. Application of Olander by Ireland, 213 Kan. 282, 285 (1973).

In determining legislative intent, it is necessary to look at the purpose to be accomplished, the necessity and effect of the statute, and the effect the statute may have under the various constructions suggested. State ex rel. Stephan v. Racing Comm'n, 296 Kan. 708, 719 (1990). This act's purpose is reflected in the general requirement that all ambulance services obtain a permit. K.S.A. 1991 Supp. 65-6125. Other sections of the act specify detailed requirements that the service must meet in order to obtain a permit. As such, the act's purpose is to insure quality ambulance services through licensing and regulation.

The express exclusions also reveal the legislature's intentions. Ambulances operated by the United States government are excluded. K.S.A. 1991 Supp. 65-6136(b). These ambulances are presumably already regulated by the U.S. government agencies owning them. Further, it is doubtful whether the legislature could constitutionally require U.S. government ambulances to obtain a state permit. In limited circumstances, ambulances from other states may operate in Kansas without a Kansas permit. K.S.A. 1991 Supp. 65-6136(a)(1), (c). Again, these ambulances are presumably licensed in their home states. To exclude ambulances operated by Kansas state institutions would create the only exception to regulation of ambulance services and would contradict the spirit of the act.

We are of the opinion that state institutions as bodies politic are "persons" within the meaning of K.S.A. 1991 Supp. 65-6125, and if the institutions operate an ambulance service that transports persons in need of medical care a permit must be obtained pursuant to K.S.A. 1991 Supp. 61-6125.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Steve Phillips
Assistant Attorney General