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ATTORNEY GENERAL OPINION NO. 92-95

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

Re: Public Health--Emergency Medical Services--Powers
and Duties of Emergency Medical Services Board

Synopsis: The board of emergency medical services sets minimum standards for municipal ambulance services. A municipality may set its own standards which are more stringent than the board's. K.S.A. 1991 Supp 65-6117 does not require the municipality to set standards or take any action other than that which is necessarily incidental to applying for a permit. Cited herein: K.S.A. 1991 Supp. 65-6110; 65-6111; 65-6117; 65-6125; 65-6127; 65-6131; 23 U.S.C. § 401, 26 U.S.C. § 3000, 23 C.F.R. § 1204.4.

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Dear Mr. McDanel:

As administrator for the board of emergency medical services you ask our opinion concerning an apparent conflict between K.S.A. 1991 Supp. 65-6117 and 65-6131 on one hand and K.S.A. 1991 Supp. 65-6110 and 65-6111 on the other. Specifically, you ask (1) whether by virtue of K.S.A. 1991 Supp. 65-6117, a municipality may establish ambulance service standards lower than those set by the board and (2) whether K.S.A. 1991 Supp. 65-6117 mandates that a municipality establish regulations for an ambulance service.

K.S.A. 1991 Supp. 65-6117 provides:

"If the governing body of a municipality establishes an emergency medical service or ambulance service as provided in this act, it shall 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."

K.S.A. 1991 Supp. 65-6131 provides:

"Nothing in this act shall be construed to preclude any municipality from licensing and regulating ambulance services located within its jurisdiction, but any licensing requirements or regulations imposed by a municipality shall be in addition to and not in lieu of the provisions of this act and the rules and regulations promulgated thereunder."

K.S.A. 1991 Supp. 65-6110 and 65-6111 describe the emergency medical service board's powers and duties. K.S.A. 1991 Supp. 65-6110 provides, in relevant part:

"(a) The board shall adopt any rules and regulations necessary for the regulation of ambulance services. Such rules and regulations shall include: (1) A classification of the different types of ambulance services; (2) requirements as to equipment necessary for ambulances and rescue vehicles; (3) qualifications and training of attendants, instructor-coordinators and first responders; (4) requirements for the licensure and renewal of licensure for ambulances and rescue vehicles; (5) records and equipment to be maintained by operators and attendants and (6) such other matters as the board deems necessary to implement and administer the provisions fo this act."

K.S.A. 1991 Supp. 65-6111 then goes on to describe other powers and duties of the board, including approving training programs for ambulance attendants.

Also relevant is K.S.A. 1991 Supp. 65-6125 and 65-6127 which provide for ambulance permits. 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."
(Emphasis added).

K.S.A. 65-6127 then describes the procedure in obtaining a permit. It provides, in relevant part:

"(a) Application for a permit to operate an ambulance service shall be made to the emergency medical services board by the operator of the ambulance service upon forms provided by the administrator and shall be accompanied by a permit fee which shall be a base amount plus an amount for each vehicle used by such operator in such operator's ambulance service and which shall be fixed by rules and regulations of the board to cover all or any part of the cost of regulation of ambulance services.

"(b) The application shall state the name of the operator, the names of the attendants of such ambulance service, the primary territory for which the permit is sought, the type of service offered, the location and physical description of the facility whereby calls for service will be received, the facility wherein vehicles are to be garaged, a description of vehicles and other equipment to be used by the service and such other information as the board may require."

The conflict, then, is apparent. On one hand, K.S.A. 1991 Supp. 65-6117 says a municipality shall establish minimum standards. On the other, K.S.A. 1991 Supp. 65-6125 and 65-6127 unambiguously require the municipality to obtain a permit from the board and K.S.A. 1991 Supp. 65-6110 and

65-6111 require the board to establish rules and regulations setting forth requirements for obtaining such permits.

In order to resolve this apparent conflict, it is helpful to review the history of regulation of ambulance services in Kansas. Prior to 1974 regulation of ambulance services was essentially up to municipalities. Kansas, however, was under pressure by the federal government to establish uniform standards for ambulance services and a state agency to administer the standards. The pressure came in the form of the highway safety act, 23 U.S.C. 401 et seq. which made receipt of certain federal funds dependent on compliance with certain highway safety program guidelines, one of which was found at 23 C.F.R. § 1204.4, Guide 11, which provided, and still provides:

"HIGHWAY SAFETY PROGRAM GUIDELINE
NO. 11
EMERGENCY MEDICAL SERVICES

"Each State, in cooperation with its local political subdivisions, should have a program to ensure that persons involved in highway accidents receive prompt emergency medical care under the range of emergency conditions encountered. The program should provide, as a minimum, that:

"I. There are training, licensing, and related requirements (as appropriate) for ambulance and rescue vehicle operators, attendants, drivers, and dispatchers.

"II. There are requirements for types and number of emergency vehicles including supplies and equipment to be carried.

"III. There are requirements for the operation and coordination of ambulances and other emergency care systems.

"IV. There are first aid training programs and refresher courses for emergency service personnel, and the general public is encouraged to take first aid courses.

"V. There are criteria for the use of two-way communications.

"VI. There are procedures for summoning and dispatching aid.

"VII. There is an up-to-date comprehensive plan for emergency medical services, including:

"A. Facilities and equipment.

"B. Definition of areas of responsibility.

"C. Agreements for mutual support.

"D. Communication systems.

"VIII. This program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary."

Other funding was made available by the emergency medical services systems act of 1973, now found at 26 U.S.C. § 300d et seq.

The first statewide regulation of ambulance services arose from the need to meet this and other federal regulation. A special committee to the 1974 Kansas legislature in recommending legislation stated:

"[T]he Committee came to realize the importance of the establishment of an emergency medical service program in the State of Kansas. Through the program, a more uniform system of delivery of emergency medical services may be developed, which can help ensure more competent and efficient medical service."

The committee also specifically noted the necessity of bringing emergency medical services into compliance with federal requirements. See Report of Special Committees to the 1974 Kansas Legislature, Proposal 103.

In 1974, the legislature passed two bills concerning ambulance services. In L. 1974, ch. 244, the legislature expressly granted municipalities the authority to establish ambulance services and to levy taxes to support the services. In section 5 of this act language now found at K.S.A. 65-6117 was set forth, requiring the municipality to establish minimal operational enactment services.

The legislature's other action in 1974 on ambulances was in L. 1974, ch. 366 which created in the office of the governor an office of emergency medical services and an emergency medical services advisory council composed of various persons interested in the topic of emergency medical services. These groups had no authority to regulate. Their mandated task was to develop "a comprehensive plan for a statewide system of emergency medical services;" including licensure standards and procedures. The act expired after one year.

In 1975 the legislature established an office of emergency medical services. See L. 1975, ch. 335. In this enactment the legislature for the first time required licensure of ambulance services. Section 4 required that by certain dates in the future, depending on city size, it would be unlawful to "operate an ambulance service without obtaining a permit pursuant to his act." Section 6 required that the office of emergency medical services not issue a permit unless it found the ambulance service would be "staffed and equipped in accordance with the rules and regulations promulgated by the secretary of health and environment. . . ."

Despite the requirement to get the permit, this enactment did not repeal K.S.A. 1974 Supp. 65-4305 at which was codified L. 1974, ch. 244, § 5, giving municipalities the authority to set minimum standards. What was the legislature's intention in enacting L. 1975, ch. 335?

The minutes of the house transportation committee stated the bill "would require operators in cities of 20,000 or more to have a permit. Minutes, House Transportation Committee, March 24, 1975. The minutes of the senate transportation committee make it clear that the legislature was worried about losing federal funds if ambulance services aren't brought into compliance. See Minutes, Senate Committee on Transportation and Utilities, March 11, 1975.

Since 1974, the state governmental body that issues permits and makes rules has changed several times, but the basic requirements and issues remain the same. One thing is clear,

however; the legislature has intended since 1974 that ambulance services obtain a permit to operate, and to obtain this permit the service must meet the standards set forth by whatever state governmental body is currently authorized to perform this task -- currently the board of emergency medical services.

This leaves the question of the purpose and effect of K.S.A. 1991 Supp. 65-6117. In a previous opinion addressing a slightly narrower question, we said,

"In accordance with K.S.A. 1989 Supp. 65-6131, a municipality may impose licensing requirements or regulations that are in addition to but not in lieu of licensing requirements or regulations imposed by statute or regulations promulgated by the board under the statutes. The board's adoption of a regulation endorsing the documents in question as training aids in attendant training programs establishes statewide what will be taught. The municipality may establish a minimum set of standards (K.S.A. 1989 Supp. 65-6117) but these standards must be in addition to those set by the board."

See Kansas Attorney General Opinion No. 90-45.

In reference to your second question, whether a municipality must establish minimum standards pursuant to K.S.A. 1991 Supp. 65-6117, when a municipality applies for a permit, K.S.A. 1991 Supp. 65-6127(b) requires that the operator state the type of service provided. If the municipality is the operator, in complying with 65-6127(b) the municipality has by necessity established minimum standards or, if the municipality has contracted for service the contract presumably establishes the level of service desired.

In essence, we do not view K.S.A. 1991 Supp. 65-6117 as a mandate to take action, or pass an ordinance, but rather a grant of authority (in connection with 65-6131) to establish additional standards, and if additional standards are not established, it is merely a statement of the obvious.

In conclusion, the board of emergency medical services sets minimum standards for municipal ambulance services. A

municipality may set its own standards which are more stringent than the board's. If the municipality chooses not to set additional, more stringent standards, K.S.A. 1991 Supp. 65-6117 does not require the municipality to take any action in addition to what it would normally do in obtaining a permit.

Very truly yours,


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