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November 25, 2014

ATTORNEY GENERAL OPINION NO. 2014- 18

J. Scott James
Kiowa County Attorney
211 East Florida Ave.
Greensburg, KS 67054

Re: Automobiles and Other Vehicles—Publicly Owned Motor Vehicles—
Private Use Forbidden

Synopsis: A vehicle is “publicly owned” for purposes of K.S.A. 8-301 if it is owned by a governmental entity, even if the governmental entity used private donations to purchase the vehicle.

With the repeal of K.S.A. 8-307 in 1995, a violation of K.S.A. 8-301 is not a crime in itself, but some violations of K.S.A. 8-301 may constitute the crime of official misconduct under K.S.A. 2014 Supp. 21-6002(a)(1). Cited herein: K.S.A. 8-301; K.S.A. 8-307 (Furse 1991); K.S.A. 2014 Supp. 21-6002.

* * *

Dear Mr. James:

As the Kiowa County Attorney, you ask several questions regarding K.S.A. 8-301, which provides that “[n]o person or employee of the state or county or any governmental subdivision shall operate or drive or cause to be operated or driven any state, county or other publicly owned automobile, automobile bus, motor bus, or other motor vehicle for private use or for private business or for pleasure.”

Your first question is whether this statutory prohibition applies to private individuals. You argue that the phrase “person . . . of the state” does not make much sense and that the word “person” should therefore be read in isolation as referring to all persons, including private individuals. This view is reasonable, but at the same time, reading “person” to mean any individual would render the subsequent phrase “employee of the

state or county or any governmental subdivision” superfluous, since those employees are persons. And, as a general matter, statutes should be interpreted to avoid redundancy.¹ For all practical purposes, though, this question is moot given our conclusion below that a violation of K.S.A. 8-301 is not a crime in itself. We therefore decline to offer an opinion on the issue.

Next, you ask whether vehicles purchased with donations to a public agency are “publicly owned.” The plain language of the statute covers “state, county or other publicly owned” vehicles, and in this context the word “publicly” ordinarily means “by a government.”² In our opinion, “state, county or other publicly owned” vehicles are vehicles owned by the state, a county, or another governmental entity, even if the state, county, or other governmental entity used private donations to purchase the vehicles.

Your third question is what effect the repeal of K.S.A. 8-307 has on prosecutions of K.S.A. 8-301. Prior to its repeal in 1995, K.S.A. 8-307 provided:

No officer or employee of the state of Kansas or political subdivision shall use any vehicle³ for any personal use whatsoever. Any officer or employee who shall violate any of the provisions of this act or any act of which it is amendatory shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense. . . .⁴

After the repeal of K.S.A. 8-307, a violation of K.S.A. 8-301 is not a crime in itself. We note, however, that when the Legislature repealed K.S.A. 8-307, it added a prohibition on the private use of public vehicles to K.S.A. 21-6002, the official misconduct statute.⁵ Therefore, some actions prohibited by K.S.A. 8-301 may constitute the crime of official misconduct under K.S.A. 21-6002(a)(1).

Finally, you ask whether a private hospital management company may title vehicles, equipment, or real estate purchased with money from the county hospital in the name of the private management company. The fact that property has been purchased with money from a public entity does not necessarily mean that the property is publicly owned. For example, it is possible that an agreement between the hospital and the private management company allows the private management company to acquire ownership of certain property purchased with money provided by the hospital. Whether particular property is owned by the hospital or a private management company is a question of fact beyond the scope of an Attorney General opinion.

¹ See *State v. Sedellos*, 279 Kan. 777, 783-84 (2005) (“[C]ourts should avoid interpreting a statute in such a way that part of it becomes meaningless, useless, or surplusage.”).

² “Publicly.” Merriam-Webster.com. <http://www.merriam-webster.com/dictionary/publicly> (accessed November 21, 2014).

³ K.S.A. 8-304 defines “vehicle” as “a passenger motor vehicle having a seating capacity of less than eight (8) persons and which is the property of a political subdivision of the state of Kansas.”

⁴ K.S.A. 8-307 (Furse 1991), repealed by L. 1995, ch. 184, § 4.

⁵ See L. 1995, ch. 184, § 2.

J. Scott James
Page 3

Sincerely,

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