

1975 S.C. Op. Atty. Gen. 210 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4143, 1975 WL 22439

Office of the Attorney General

State of South Carolina

Opinion No. 4143

September 30, 1975

***1 AN OUT-OF-STATE RESCUE SQUAD MUST BE LICENSED BY THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO OPERATE AN AMBULANCE SERVICE IN SOUTH CAROLINA TO MAINTAIN SUCH SERVICE AT A SOUTH CAROLINA RACE TRACK. THE PROVISIONS OF THE EMERGENCY MEDICAL SERVICE ACT (ACT NO. 1118 OF THE 1974 ACTS AND JOINT RESOLUTIONS OF THE SOUTH CAROLINA LEGISLATURE) ARE ENFORCED BY THE ABOVE AGENCY. IT IS THE RESPONSIBILITY OF THE INDIVIDUAL RESCUE SQUAD TO SEE THAT IT IS COMPLYING WITH THE ACT.**

TO: Samuel H. Crowe

Supervisor

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QUESTION(S) PRESENTED:

1. May an Out-Of-State Rescue Squad which is not licensed by the Department of Health and Environmental Control to operate an Ambulance Service in South Carolina operate such a service at a race track within South Carolina?
2. If said Rescue Squad is operating in violation of Act No. 1118 of the 1974 Acts and Joint Resolutions of the General Assembly of the State of South Carolina (the Emergency Medical Services Act), who should enforce the law?
3. If question No. 1, above, is answered in the negative, who is responsible for the violation, the Rescue Squad or the Speed-way Promoter?

STATUTES, CASES, ETC., INVOLVED:

Act No. 1118 of the 1974 Acts and Joint Resolutions of the South Carolina Legislature; [Williamson v. Lee Optical Company](#), 348 U.S. 483, 75 S.Ct. 461 (1955); [South Carolina Highway Department v. Barnwell Brothers](#), 303 U.S. 177, 58 S.Ct. 510 (1938).

DISCUSSION OF ISSUE(S):

Your first question concerning whether or not an Out-Of-State Rescue Squad may operate at a South Carolina Race Track without being licensed is answered in the negative. An Out-Of-State Rescue Squad may not operate in this state without a valid license.

Section 4(a) of Act 1118 (the Emergency Medical Services Act) of the 1974 Acts and Joint Resolutions of the General Assembly of the State of South Carolina (hereafter cited as the EMS Act) provides that '[n]o person, firm, corporation, association, county, district, municipality or metropolitan government or agency, either as owner, agent, or otherwise,

shall hereafter furnish, operate, conduct, maintain, advertise, or otherwise engage in or profess to engage in the business or service of transporting patients without obtaining a valid license and ambulance permit issued by the department.’

Section 5 of the EMS Act specifies in part that ‘. . . no vehicle may be operated as an Ambulance, except its licensed owner apply for and receive an Ambulance permit issued by the department for that vehicle.’ That Section further provides that the vehicle meet certain standards as to design, construction, etc.

Under Section 3(e) a ‘Permit’ is defined as the authorization for an Ambulance which meets the standards set forth under the EMS Act.

Section 3(f) defines ‘License’ as the authorization ‘. . . to provide emergency medical services in the State.’ (emphasis added). Reading these Sections together, it can be readily ascertained that no one can conduct the business of operating an Ambulance in this State unless that person has applied for and received a permit and license from the Department of Health and Environmental Control.

*2 The term ‘Operator’ is defined in Section 3(o) not only as an individual but also any grouping of people ‘acting together for a common purpose.’ This definition would include a Rescue Squad as those whom the Statute intends to license. This is further enhanced by Section 10 of the EMS Act which covers exemptions from the Act. Section 10 exempts only (a) Federal Government Ambulances; (b) Vehicles used during a catastrophe when sufficient licensed Ambulances are unavailable; and, (c) Vehicles used on an individual basis to carry sick or injured persons under the provisions of the ‘Good Samaritan Act’ (Section 46–803 of the 1962 Code). These are the only exemptions allowed under this Act.

A State may regulate the activities of Out-Of-State operators who enter that State provided both intrastate and interstate commerce are uniformly treated and if both are so treated, then such regulation will not be considered an infringement on interstate commerce. [Williamson v. Lee Optical Co.](#), 348 U.S. 483, 75 S.Ct. 461 (1955); [South Carolina Highway Department v. Barnwell Brothers](#), 303 U.S. 177, 58 S.Ct. 510 (1938). This right to regulate is limited to the right of the State to protect its citizens' health, safety, and welfare. However, there can be no question that the operation of an Ambulance Service would fall within these constitutionally permissible areas of regulation.

The answer to your second question concerning who should enforce the Act is that enforcement should be by the Department of Health and Environmental Control. (Section 2(a) of the EMS Act states:

The Department of Health and Environmental Control, with the advice of the Emergency Medical Service Advisory Council, shall develop standards and prescribe regulations for the improvement of emergency medical services (hereinafter referred to as EMS) in the State. All administrative responsibility for this program shall be vested in the department.

In addition, Section 7(c) of the EMS Act provides:

Whoever . . . violates any provision of this Act or Rule or Regulation of the Board promulgated pursuant thereto, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars nor more than two thousand dollars or by imprisonment for not less than ten days nor more than six months for each offense.

These two Sections make it obvious that violation of this Act or a Rule or Regulation promulgated under said Act is a criminal violation and enforcement of the Act is the responsibility of the Department of Health and Environmental Control.

In accordance with the above, we have forwarded information concerning this situation to the Division of Emergency Medical Services for consideration. We are endeavoring to reach a non-judicial solution to this problem if possible.

The answer to your third question which was who bears the responsibility for the violation of the EMS Act, is answered by stating that the Rescue Squad is responsible for complying with the EMS Act. Section 2(b) states that '[t]he EMS program shall include, but not be limited to, the regulation and licensing of public, private, volunteer or other type ambulances services; . . .' This Section, plus the numerous references throughout the EMS Act to 'operation' or 'owner' indicate that the responsibility for licensing is on the owner or operation of the Ambulance Service.

CONCLUSION:

*3 It is my opinion that an Out-Of-State Rescue Squad which comes into the State to perform emergency medical services must be licensed by the Department of Health and Environmental Control under the Provisions of Act No. 1118 of the 1974 Acts and Joint Resolutions of the General Assembly. Violations of this Act will be enforced by the Department. Operators of any type Ambulance Service are responsible for seeing that their services are properly licensed.

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