

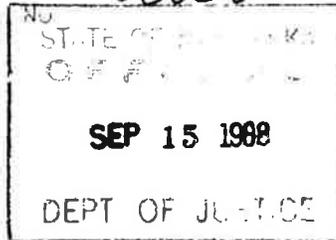
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DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

# 88038



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: September 7, 1988

SUBJECT: How does the Director of the Department of Motor Vehicles designate which publicly or privately owned vehicles are "authorized emergency vehicles" pursuant to Neb.Rev.Stat. § 39-602(5)?

REQUESTED BY: Margaret L. Higgins, Director  
Department of Motor Vehicles

WRITTEN BY: Robert M. Spire, Attorney General  
David Edward Cygan, Assistant Attorney General

Your letter of May 25, 1988, to this office requests an opinion on how the Director of the Department of Motor Vehicles designates which publicly or privately owned vehicles are "authorized emergency vehicles" pursuant to Neb.Rev.Stat. § 39-602(5). As you have indicated in your letter, previous policy of the Department of Motor Vehicles was to also designate volunteer fireman's vehicles, rescue squad units, ambulances, law enforcement vehicles and emergency medical units as authorized emergency vehicles. If such vehicles are equipped with rotating or flashing red lights, then such vehicles must meet the requirements contained in Neb.Rev.Stat. § 39-6,151 which provides that emergency vehicles may display rotating or flashing red lights only after the granting of a permit obtained from the County Sheriff. Therefore, the issue underlying your opinion request appears to be whether the Director of the Department of Motor Vehicles may delegate his/her duty to a County Sheriff to designate what is an "authorized emergency vehicle" since the County Sheriff would already be required to make a determination on the issuance of a permit to display flashing or rotating red lights.

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It is difficult to define what constitutes an "authorized emergency vehicle." Some guidelines are laid out in 3 Blashfield, Cyclopedia of Automobile Law and Practice, § 131.2, 577-579, where it is stated:

The question whether a given vehicle is an authorized emergency vehicle . . . commonly depends on the use to which the vehicle is being devoted at the particular time . . . generally, a vehicle is within the category of authorized emergency vehicles if . . . it is engaged at the time in question on official emergency duties or is responding to an emergency call; otherwise it is not an authorized emergency vehicle.

This circular analysis has lead many states to legislate a broad definition of what constitutes an "authorized emergency vehicle."

The majority of states have statutes similar to Nebraska's in regard to determining emergency vehicle status. Further, most states leave the determination as to what other vehicles should be accorded the status to the Director, Secretary, or other similar designated official. Section 257.3 of the Mich. Comp. Laws Ann. states that "authorized emergency vehicles" are "vehicles of the Fire Department, Police vehicles, Ambulances, Emergency vehicles of governmental Departments, or such vehicles of public service corporations and privately owned motor vehicles of volunteer and paid firemen as are authorized by the Commissioner." Likewise, New Jersey authorizes "vehicles of the Fire Department, Police vehicles and such Ambulances and other vehicles as are approved by the Director of the Division of the Motor Vehicles . . . when operated in response to an emergency call." N.J.S.A. 39:1-1. Similarly, Title 21, § 4106 of the Del. Code Ann., defines an "authorized emergency vehicle" as:

Vehicles of a Fire Department, Police vehicles, Ambulances, vehicles used by a Fire Chief, Assistant Fire Chief, Fire Engineer or Fire Policeman of any duly organized fire company in the performance of his duties, the vehicle of the State Forester in the performance of his duties, the vehicle of Forest Fire Control Supervisor in the performance of his duties, and emergency vehicles of State, Federal, County or Municipal Departments or Public Service Corporations as are designated or authorized by the Secretary.

As the above statutes indicate, while the Director, Secretary, or other authorized official has the capacity to designate other vehicles as "authorized emergency vehicles,"

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there is no guide as to how the Director is to decide which vehicles merit emergency vehicle status. It would appear that the most efficient way to designate what constitutes an "authorized emergency vehicle" would be for the Director to assign generic classes of vehicles, such as "Firetrucks" and "Police cars." If the vehicle did not neatly fit inside one of the generic classifications, further assessments could be conducted by the County Sheriff. The County Sheriff could then designate the "authorized emergency vehicle" at the same time the entity applied for an emergency light permit pursuant to Neb.Rev.Stat. § 39-6,151. In summary, the Director may designate generic classifications of "authorized emergency vehicles." These generic classifications would be established to cover the great majority of cases. Those cases that do not clearly meet the guidelines established by the Director, would be subject to the scrutiny of the County Sheriff under the authority of the Director of the Department of Motor Vehicles.

Sincerely,

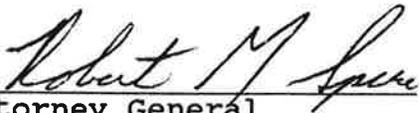
ROBERT M. SPIRE  
Attorney General



David Edward Cygan  
Assistant Attorney General

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APPROVED BY:

  
Attorney General