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[Previous Case](#) [Top Of Index](#) [This Point in Index](#) [Citationize](#) [Next Case](#) [Print Only](#)

Question Submitted by: The Honorable Guy Davis, Oklahoma House of Representatives

1983 OK AG 154

Decided: 12/30/1983

Oklahoma Attorney General

Cite as: 1983 OK AG 154, __ __

¶0 The Attorney General has received your request for an official opinion, asking, in effect:

1. Is an ambulance service operated by an Emergency Medical Service district organized under Article X , Section 9C, of the Oklahoma Constitution required to establish its budget year to begin July 1 of each year?
2. Is the manager of such ambulance service, who is employed and not elected, subject to the nepotism laws of the State in respect to his position?
3. Is an Emergency Medical Service district subject to the Oklahoma Open Meeting Act, 25 O.S. 301 - 25 O.S. 314 (1981)?
4. Are the employees of an ambulance service of the Emergency Medical Service district county employees?
5. In what category are these employees if the answer to question 4 is no?

I.

¶1 Your first question asks when the fiscal year of an ambulance service organized by an Emergency Medical Service (hereinafter EMS) district may commence. Article X, Section 1, of the Oklahoma Constitution provides that the fiscal year shall commence on the first day of July in each year unless otherwise provided by law. As there is no other provision for the establishment of the fiscal year for an EMS district, the fiscal year must commence on the first day of July in each year.

II.

¶2 Your second question asks whether the manager of an ambulance service created under Article X, Section 9C, who is employed and not elected, is subject to state nepotism laws.

¶3 Article X, Section 9C(a), provides that the district board of trustees:

". . . shall have the additional powers to hire a manager and appropriate personnel, contract, organize, maintain or otherwise operate the emergency medical services within said district and such additional powers as may be authorized by the Legislature."

¶4 The initial employment of the manager would subject the employers to the state laws against nepotism. State law prohibits executives or ministerial officers from appointing or voting:

". . . for the appointment of any person related to him by affinity or consanguinity within the third degree, to any clerkship, office, position, employment or duty in any department of the state, district, county, city or municipal government of which such executive, legislative, ministerial or judicial officer is a member, when the salary, wages, pay or compensation of such appointee is to be paid out of the public funds or fees of such office...." 21 O.S. 481 (1981).

¶5 Thus, the statute prohibits the EMS district's board of trustees from hiring relatives for positions in the EMS district. If the board properly delegates its hiring power to the manager of the ambulance service, then the manager would also be bound by the statute prohibiting nepotism.

III.

¶6 Your third question is whether an EMS district is subject to the provisions of the Oklahoma Open Meeting Act, codified at 25 O.S. 301 - 25 O.S. 314 (1981).

¶7 In 25 O.S. 304(1) (1981), the following definition is stated:

"1. 'Public body' means the governing bodies of all municipalities located within the State of Oklahoma, boards of county commissioners of the counties in the State of Oklahoma, boards of public and higher education in the State of Oklahoma and all boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts, task forces or study groups in the State of Oklahoma supported in whole or in part by public funds or entrusted with the expending of public funds, or administering public property, and shall include all committees or subcommittees of any public body. It shall not mean the state judiciary or the State Legislature or administrative staffs of public bodies, including, but not limited to, faculty meetings and athletic staff meetings of institutions of higher education, when said staffs are not meeting with the public body."

¶8 Article X, Section 9C, of the Oklahoma Constitution provides in pertinent part or the financing of an EMS district with public funds. Since the EMS district's board of trustees is entrusted with the expenditure of public funds, such board is a public body as defined by statute and is subject to the Oklahoma Open Meeting Act.

IV.

¶9 Your last two questions are directly related and will be discussed jointly. You ask if the employees of an Article X , Section 9C, ambulance service are county employees. Your question five then asks how these employees may be categorized if they are not county employees.

¶10 The Oklahoma Constitution, Article X , Section 9C, provides for the creation of EMS districts. At Article X , Section 9C(a) it provides:

"Said area may embrace a county, a part thereof, or more than one county or parts thereof, and in the event the area covers only a part or parts of one or more counties, the area must follow school district boundary lines...."

¶11 The composition of such a district is not necessarily confined to county boundary lines.

¶12 Attorney General Opinion No.77-208 states that the district attorney is not required to represent the board of trustees of an EMS district as there is nothing in Article X, Section 9C, of the Oklahoma Constitution to indicate that such district, the board of trustees of such district or the board members, are county offices or county officers within the meaning of the statute

in question.

¶13 The Oklahoma Supreme Court held that a drainage district was a separate, independent and distinct entity from the county in *Board of County Commissioners v. Robertson*. 130 P. 947 (Okl. 1913). The Court said in *Robertson*:

"It is not brought into existence or created for the purpose of either county, township, or any other species of municipal government." *Id.*, at 949.

¶14 Based on these authorities, if the board of trustees is not a county office or employee, the employees of the board of trustees would not be county employees. In light of the foregoing authority, the employees of the EMS district would be employees of the EMS district.

¶15 It is, therefore, the official opinion of the Attorney General that:

1. An ambulance service operated by an EMS district created under Article X , Section 9C, of the Oklahoma Constitution is required to establish its fiscal year to commence on July 1 of each year.
2. The board of trustees of an EMS district is subject to the state nepotism laws in regard to hiring a manager for an EMS district ambulance service. If the board properly delegates its hiring authority to the manager, he, too, would be subject to the state nepotism laws.
3. An EMS district's board of trustees is considered a public body as that term is defined by the Oklahoma Open Meeting Act; the meetings of the board of trustees must, therefore, comply with the provisions of the Oklahoma Open Meeting Act.
4. The employees of an ambulance service operated by an Article X , Section 9C, entity are not county employees as the EMS district is a separate and independent body from the county. The employees of an EMS district are employees of the EMS district.

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ATTORNEY GENERAL OF OKLAHOMA
ELIZABETH J. BRADFORD
ASSISTANT ATTORNEY GENERAL

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Cite Name Level

None Found.

Citationizer: Table of Authority

Cite Name

Level

Title 21. Crimes and Punishments

Cite	Name	Level
<u>21 O.S. 481,</u>	<u>Employment of Relatives Unlawful - Divorce Terminates Limitation - Exception</u>	Cited

Title 25. Definitions and General Provisions

Cite	Name	Level
<u>25 O.S. 301,</u>	<u>Short Title</u>	Discussed
<u>25 O.S. 304,</u>	<u>Definitions</u>	Cited
<u>25 O.S. 314,</u>	<u>Violations - Criminal Penalties - Civil Relief</u>	Discussed