



STATE OF KANSAS

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August 7, 1975

ATTORNEY GENERAL OPINION NO. 75-316

Honorable Duane S. McGill
Speaker of the House
House of Representatives
State Capitol Building
Topeka, Kansas

RE: Insurance -- Committee on Surety Bonds
and Insurance -- Appropriations

SYNOPSIS: A specific appropriation for the purchase of liability insurance for the state, its officers and employees, is not required and may be assessed against Fiscal Year 1976 agency appropriations under existing laws. State Finance Council action is not necessary to effectuate the coverage.

* * *

Dear Speaker McGill:

You inquire concerning the proposed purchase of liability insurance covering state agencies and employees. First, you inquire whether the prorata share of the premium cost attributable to each agency may be assessed against each agency appropriation, notwithstanding no specific appropriation was made for this purpose.

K.S.A. 1974 Supp. 75-4105 provides in pertinent part thus:

"The committee [on surety bonds and insurance] shall prorate, where more than one (1) state agency is covered by any policy or bond, the cost of premiums on any and all bonds and/or insurance contracts. . . purchased as charges upon the funds of the state agency wherein

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any covered state officers or employees are employed or covered property is located or controlled. Such prorated charges shall constitute a lawful charge by the committee upon the funds available to any such state agency. . . ."

After the committee prorates the cost of the premium among the agencies covered by the policy, the amount so prorated becomes a lawful charge against any funds of the agency lawfully available for the purpose. The existence of specifically appropriated monies is not necessary for the prorated premium cost to constitute a lawful charge or encumbrance upon agency monies lawfully available for the purpose. Certainly, the prorated premium cost would be a lawful charge against any general operating funds of an agency.

Indeed, such a course is specifically contemplated by K.S.A. 1974 Supp. 75-4356, et seq. This enactment authorizes the state, any county, city or school district to provide legal counsel and to pay the costs of defense when any elected or appointed officer, appointed deputy or assistant shall be sued for damages for alleged nonfeasance, misfeasance or malfeasance of the duties of office. Alternatively, in lieu of furnishing legal counsel, the state and the enumerated political subdivisions are authorized to pay the premiums on insurance protecting such officers, deputies and assistants in the event of suit. K.S.A. 1974 Supp. 75-4358 states thus:

"All payments authorized by this act shall be paid from the general operating fund of any such county, city or school district and from the operating fund of any state agency in which such officer, deputy or assistant serves." [Emphasis supplied.]

In 1970, there was enacted K.S.A. 74-4715, which states thus:

"(a) The procurement of insurance is hereby authorized for the purpose of insuring the state or any county or city, and their officers, employees and agents against any liability, in addition to liability covered by the Kansas workmen's compensation law, for injuries or damages resulting from any tortious conduct of such officers, employees and agents arising

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from the course of their employment.

(b) Such insurance may be procured for the state or employee thereof, by the committee on surety bonds and insurance. . . and subject to appropriations being made therefor." [Emphasis supplied.]

The latter underscored language suggests that specific appropriations for the purchase of insurance under this section are necessary. However, in 1974, K.S.A. 1974 Supp. 75-4114 was enacted:

"The committee. . . may purchase such liability insurance as they deem necessary for the protection of the state and its officers, employees and agents against any liability for injuries and damages resulting from any tortious conduct of such officers, employees or agents arising from the course of their employment or from any liability for injuries or damages resulting from conduct or decisions of such officers, employees or agents in carrying out the official duties of their offices pursuant to existing law, rule or regulation or court order." [Emphasis supplied.]

The underscored language reflects the concern arising since 1970 with the possible liability of state officers and employees in civil actions for alleged infringements of civil rights alleged to occur in the performance of their duties. The underscored language was obviously designed to authorize coverage of liabilities for civil wrongs and causes of action other than those which historically have been classified as tortious. Nothing in the 1974 enactment suggests that the purchase of such insurance is subject to specific appropriations therefor. Indeed, 1974 amendment was amendatory of sections found in article 41, relating to the Committee on Surety Bonds and Insurance, and as to all insurance purchased thereunder, premium costs may be prorated among agencies covered thereby pursuant to K.S.A. 1974 Supp. 75-4105, except as specifically provided otherwise in that article, and there is no such specific contrary provision therein applicable to insurance purchased under K.S.A. 1974 Supp. 75-4114.

In light of this abundant statutory authority, it is my opinion that the authority of the Committee on Surety Bonds and Insurance to purchase insurance under K.S.A. 1974 Supp. 75-4114 and K.S.A. 1974 Supp. 75-4358 is not subject to specific appropriations for that purpose and may be assessed against agency appropriations for Fiscal Year 1976.

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Secondly, you inquire whether the State Finance Council may, under existing state statutes and appropriation acts, authorize a state agency to pay the foregoing assessment from monies available to it in fiscal 1976, but which may not be expended unless so authorized. A number of appropriation bills contain frequent expenditure limitations, with the proviso that expenditures may not exceed the limitation except upon approval of the State Finance Council. In addition, as you point out, ch. 449, L. 1975, states thus:

"It is the intention of this act to provide flexibility in appropriations subject to the conditions and limitations herein specified. Any state agency may, with the approval of the state finance council, transfer all or any part of one of its items of appropriation to another of its items of appropriation. The state finance council shall cause any transfer so approved to be made."

As you are aware, the powers of the State Finance Council to exercise this power, and the power to amend expenditure limitations, are challenged in pending litigation in the Shawnee County District Court. It is a contention of this office in that suit that the vesting of such powers in the State Finance Council constitutes either an impermissible delegation of legislative power or, alternatively, a vesting of administrative, i.e., executive, power in a body composed primarily of members of the legislative branch. It is my opinion that there is no constitutional basis for the exercise of these powers by the State Finance Council and in light of conclusion reached above there is no necessity for the exercise by the council of this challenged power under the circumstances presented by the Committee on Surety Bonds and Insurance purchasing insurance on behalf of the state, its officers and employees.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:en