



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

September 18, 1975

ATTORNEY GENERAL'S OPINION NO. 75- 366

Mr. Robert M. Corbett
Attorney
Kansas State Department of Health & Environment
Forbes AFB
Topeka, Kansas 66620

RE: Public Health--Water Pollution and Air Quality Control
Inspections--Inspector's Access to Facilities and
Properties

Synopsis: The admittance of duly authorized representatives of
the secretary of the Kansas state department of health
and environment for the purpose of conducting legally
required inspections of property and premises may not
be conditioned upon the signing of a guest register or
of a purported waiver of liability for negligence.

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Dear Mr. Corbett:

You advise that on occasion inspectors from the Kansas state
department of health and environment who have sought to conduct
required inspections have been denied admittance to certain factories
until they have signed a guest register. Some of these registers
contain a statement purporting to waive liability for the landowner's
negligence when an individual signs and enters as a guest.

K.S.A. 1974 Supp. 65-170b deals with access to facilities for
the purpose of determining compliance with state water pollution
requirements. 65-170b states:

"In performing investigations or administrative
functions relating to water pollution or water supply
as provided by K.S.A. 65-161 and 65-171j, inclusive, or
any amendments thereto, the secretary of health and
environment or his duly authorized representatives

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shall have reasonable access to all properties and facilities subject to the provisions of K.S.A. 65-161 to 65-171j, inclusive, or any amendments thereto, for the purpose of observing, monitoring, collecting samples and examining records and facilities to determine compliance or noncompliance with state requirements relating to water pollution or water supply. The secretary of health and environment or his duly authorized representatives shall make such requirements as they deem necessary relating to the inspection and monitoring by any holder of a sewage discharge permit issued pursuant to K.S.A. 65-165, or any amendments thereto." (emphasis supplied)

K.S.A. 1974 Supp. 65-170d provides that any person who fails to grant access to representatives of the secretary as required by 65-170b may incur, in addition to any other penalties provided by law, a civil penalty of up to \$10,000.00.

K.S.A. 1974 Supp. 65-3009 likewise grants reasonable access to property to representatives of the secretary who conduct inspections under authority of the Kansas Air Quality Control Act, K.S.A. 65-3001, et seq. 65-3009 states:

"The secretary may designate competent representatives who may enter and inspect any property, premise or place at any reasonable time for the purpose of investigating either an actual or possible source of air pollution or of ascertaining the state of compliance with this act and regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the secretary who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. If requested, the owner or operator of the premises shall receive a report setting forth levels of emissions and any other facts found which relate to compliance status." (emphasis supplied)

Any person who refuses to allow inspectors to enter and inspect property pursuant to 65-3009 may be ordered by the secretary to permit such inspection under the terms of K.S.A. 1974 Supp. 65-3011. Violation of such an order is punishable by a fine of up to \$1,000.00 as provided in K.S.A. 1974 Supp. 65-3018.

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In summary, it is clear that admittance of authorized representatives of the secretary for the purpose of conducting legally required inspections may not be conditioned upon the signing of a guest list or of a purported waiver of liability for landowner negligence.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/TFW/cgm