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..."
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
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