



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 18, 1976

ATTORNEY GENERAL OPINION NO. 76- 98

Mr. Albert P. Kovac
Attorney at Law
366 New Brotherhood Building
Kansas City, Kansas 66101

Re: Cities--Housing Authorities--Liability

Synopsis: The liability of the Kansas City, Kansas, Housing Authority for negligence is unaffected by the recent decision of the Kansas Supreme Court in *Brown v. Wichita State University*, and the liability of the Authority remains as it was prior to that decision.

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Dear Mr. Kovac:

As counsel for the Kansas City, Kansas, Housing Authority, you inquire concerning the effect of the recent decision of the Kansas Supreme Court in *Brown v. Wichita State University*, concerning governmental immunity.

Among the foremost issues in that case was the constitutionality of K.S.A. 46-901, which provides in part that the following

"shall be immune from liability and suit on an implied contract, or for negligence or any other tort, except as is otherwise specifically provided by statute:

- (1) The state of Kansas; and
- (2) boards, commissions, departments, agencies, bureaus and institutions of the state of Kansas; and

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(3) all committees, assemblies, groups, by whatever designation, authorized by constitution or statute to act on behalf of or for the state of Kansas."

The immunity created by this statute applies specifically only to the State of Kansas and its agencies, departments and the like. K.S.A. 46-902(a) specifically so provides:

"(a) Nothing in section 1 [46-901] of this act shall apply to or change the liabilities of local units of government, including (but not limited to) counties, cities, school districts, community junior colleges, library districts, hospital districts, cemetery districts, fire districts, townships, water districts, irrigation districts, drainage districts and sewer districts, and boards, commissions, committees, authorities, departments and agencies of local units of government."

A municipal housing authority created pursuant to the Kansas Municipal Housing Law, K.S.A. 17-2337 *et seq.*, is "any agency of a municipality created pursuant to this act." K.S.A. 17-2339(a). It is thus an agency of the city, and not of the State of Kansas, and its liability for negligence, if any, is unaffected by K.S.A. 46-901, and the decision of the Court in *Brown* upholding the constitutionality of that statute.

In short, the exposure of the Authority remains unaffected by *Brown*, and its decision regarding renewal of its present policy should not be based on any immunity accorded the State of Kansas by that decision.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj