



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

August 11, 1977

ATTORNEY GENERAL OPINION NO. 77-266

Mr. Gerald C. Golden  
City Attorney  
127 North Fowler  
Post Office Box R  
Meade, Kansas 67864

Re: Cities--Liability--Proprietary Acts

Synopsis: In the leasing of a vacant tract of ground owned by the city to a private nonprofit corporation for the operation of a motorcycle track, the city acts in a proprietary capacity rather than a governmental capacity, and may suffer substantial exposure to claims of liability based upon negligent acts or omissions which are attributable to the city itself and which are the cause of injuries in the operation of the track.

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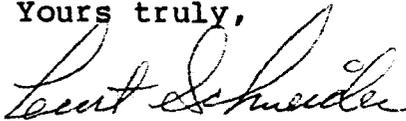
Dear Mr. Golden:

You advise that the City of Meade owns a tract of land which it has been requested to lease to a local nonprofit corporation to be used for the establishment and operation of a motorcycle course. You have advised the city that as lessor of the property, the city would very likely be unable to claim successfully governmental immunity from liability for any injury resulting from negligence on the part of the city. You inquire whether, unless the city operates the motorcycle track itself as a part of the municipal recreation program, the city may be held liable in the event of an injury due to negligence which is attributable to the city.

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It is settled that in the absence of statute, and except when the conduct of the city leads to the creation of a nuisance, a city is not liable for the negligent acts of its officials and employees when they are engaged in the exercise of a governmental functions. See, e.g., Parker v. Hutchinson, 196 Kan. 148, 410 P.2d 347 (1966). In the leasing of real property to a private group for purposes such as described above, the city acts merely as an owner of real property, and in a proprietary capacity, rather than in its governmental capacity. Thus, in my judgment, the city is substantially exposed to liability for claims based upon negligent acts or omissions which are attributable to the city itself, and which lead to injuries on the track and in the operation of the motorcycle run.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj