



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 7, 1978

ATTORNEY GENERAL OPINION NO. 78-105

The Honorable Norman E. Justice
State Representative
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: Contracts--Prevailing Wage--Kansas Turnpike Authority

Synopsis: K.S.A. 44-201 applies to contracts of the Kansas Turnpike Authority.

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Dear Representative Justice:

You inquire whether K.S.A. 44-201 applies to contracts entered into by the Kansas Turnpike Authority. This statute specifies that workmen, laborers and mechanics employed pursuant to certain contracts shall be paid the "current rate of per diem wages," and defines eight hours as a day's work on such contracts. The provisions regarding hours worked per calendar day do not apply, however, to

"the construction, reconstruction, maintenance, or the production of local materials for: Highways, roads, streets, and also the structures and drainage in connection therewith; sewer systems; waterworks systems; dams and levees; canals; drainage ditches; airport grading, drainage, surfacing, seeding, and planting."

and to certain other contracts specified in K.S.A. 44-203. So far as the statute is applicable, however, you ask whether it includes contracts entered into by the Kansas Turnpike Authority.

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The statute applies to

"contracts hereafter made by or on behalf of the state of Kansas or by or on behalf of any county, city, township or other municipality of said state with any corporation, person or persons which may involve the employment of laborers, workmen or mechanics"

The Authority is created by K.S.A. 68-2003, which provides in pertinent part thus:

"There is hereby created a body politic and corporate to be known as the 'Kansas turnpike authority.' The authority is hereby constituted a public instrumentality and the exercise by the authority of the powers conferred by this act in the construction, operation and maintenance of turnpike projects shall be deemed and held to be the performance of an essential governmental function."

At *Hosterman v. Kansas Turnpike Authority*, 183 Kan. 590, 331 P.2d 323 (1958), the court stated that "The Kansas Turnpike Authority is an arm or agency of the state created by the legislature to perform an essential governmental function for the people of the state." It is authorized to "make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under" the act. K.S.A. 1977 Supp. 68-2004. When the Authority enters into a contract in the performance of its duties, it does so as an agency or instrumentality of the State of Kansas. K.S.A. 44-201 applies precisely to such contracts, those entered into by or on behalf of the State of Kansas. Contracts by the State of Kansas are necessarily executed by agencies, departments, and instrumentalities of the state, and it is in that capacity that the Turnpike Authority acts. I can find no sound justification upon which the Authority could be exempted from compliance with the requirements of K.S.A. 44-201.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj