

STATE OF KANSAS

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Curt T. Schneider
Attorney General

June 19, 1978

ATTORNEY GENERAL OPINION NO. 78- 199

Honorable Carl B. Anderson, Jr.
Associate District Court Judge
Ninth Judicial District
McPherson, Kansas 67460

Re: Counties--Juvenile Offenders--Medical Treatment

Synopsis: Under the juvenile work release program proposed by the McPherson County District Court, neither the state nor the county would be liable for the medical expenses incurred by a juvenile injured while working under such program.

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Dear Judge Anderson:

As Associate District Judge for the Ninth Judicial District, you request an opinion regarding a proposed work program for juveniles who break the law and are subsequently found to be either delinquent, miscreant, wayward or traffic offenders.

Under the program, any juvenile who is adjudged to be either delinquent, miscreant, wayward or a traffic offender, who is not institutionalized, but rather is given probation, would be required as a term of probation to perform a certain number of hours of public work for qualifying organizations in McPherson County. This work would be performed at no charge to the organization, and waivers of liability would be obtained from each organization releasing the State of Kansas and McPherson County from any liability for any negligent acts of the juvenile. It would be required that the work involved be nonhazardous, and a representative of the organization, as well as a representative of the court, would be present to supervise the work.

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Based on the above information, you specifically ask the following questions:

- 1) What liability would McPherson County and/or the State of Kansas have to a juvenile who was injured while involved in this work program?
- 2) What liability would McPherson County and/or the State of Kansas have to an individual or organization that was injured by the negligent act of a juvenile while engaged in the work program?

First of all, in both instances raised by the above question, the State would not incur any liability. K.S.A. 46-901 provides in part:

"(a) It is hereby declared and provided 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 provided by statute:

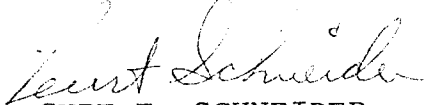
- (1) The state of Kansas;"

Likewise, in my judgment, McPherson County has no liability in such circumstances. The juvenile is subject to the jurisdiction of the McPherson County District Court, a part of the statewide unified court of justice created by Article 3, § 1 of the Kansas Constitution. The board of county commissioners has no statutory or other official role regarding juveniles who are released on probation by the district court. If a child is placed in accordance with subparagraphs (2) through (6) of K.S.A. 1977 Supp. 38-826(a), in those instances under K.S.A. 1977 Supp. 38-827(b), the expenses of the care and custody of the child shall be paid out of the state social welfare fund if the child is eligible for assistance under K.S.A. 1977 Supp. 39-709, and otherwise out of the general fund of the county in which proceedings are brought. In the program as described above, however, the child is placed on probation, pursuant to subparagraph (1) of K.S.A. 1977 Supp. 38-826, and the county has no statutory responsibility for the child thus released on probation. Thus, if a child is injured while released on probation and performing work for a qualifying organization and not for or in

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behalf of the board of county commissioners, I see no basis upon which the county bears any responsibility for such injuries.

Yours truly,



CURT T. SCHNEIDER
Attorney General

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