



STATE OF KANSAS

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August 24, 1979

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ATTORNEY GENERAL OPINION NO. 79- 188

Lew McGill
Superintendent of Schools
Riley County U.S.D. No. 378
Riley, Kansas 66531

Re: Civil Procedure--Tort Claims Act--Insurance
Contracts and Limits to Liability

Synopsis: Pursuant to the Kansas Tort Claims Act (L. 1979,
ch. 186), purchase of liability insurance by a
school district providing for coverage beyond
the limits of liability provided by law will
subject the insurer of such school district to
greater liability than required by law.

* * *

Dear Mr. McGill:

This is to acknowledge receipt of your letter of August 21,
1979, regarding the extent of liability of your school district
where the terms of a contract for insurance provide for greater
liability than provided by statute.

Substitute for Senate Bill No. 76, Section 5(a) [L. 1979, ch. 186,
§5a] provides:

"Subject to the provisions of section 11,
the liability of a governmental entity for
claims within the scope of this act shall
not exceed five hundred thousand dollars
(\$500,000) for any number of claims arising
out of a single occurrence or accident."

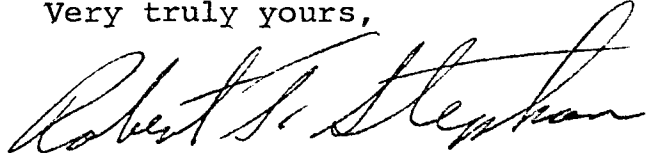
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New Section 11 relating to defenses available to insurance provides, in pertinent part:

"Insurers of governmental entities may avail themselves of any defense that would be available to a governmental entity defending itself in an action within the scope of this act, except that the limitation provided by subsection 5 shall not be applicable where the contract of insurance provides for coverage in excess of such limitation in which case the limitation on liability shall be fixed at the amount for which insurance coverage has been purchased." (Emphasis added.)

Thus, we would conclude that if the school district were to purchase insurance providing liability coverage to an amount beyond that limited by statute, the insurer would be subject to the greater liability as provided by the contract.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:gk