



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 79-259

The Honorable W. Edgar Moore
State Representative, District 26
2103 East 127th Street
Olathe, Kansas 66061

Re: Civil Procedure--Tort Claims Act--Indemnification
of State Employees

Synopsis: Kansas law provides for indemnification of
state employees and agents acting within the
scope of their employment while performing law
enforcement activities in connection with the
size and weight laws pursuant to K.S.A. 8-1901
et seq.

* * *

Dear Representative Moore:

You request the opinion of this office regarding the potential tort liability for state employees pursuant to the Kansas Tort Claims Act (L. 1979, ch. 186, §§1-15). Specifically, you ask whether a state employee, whose jobs it is to check truck weights and who is involved in delivering an accused violator to the county authorities for the filing of charges, is liable for injuries to the accused if injured in an auto accident en-route to the courthouse.

K.S.A. 1978 Supp. 8-1910 authorizes the secretary of revenue to designate agents or employees to enforce the size and weight laws. A violation of said laws is a misdemeanor. Therefore, the properly-designated department of revenue agents and employees are specifically "granted the authority of a police officer to control, direct and to weigh traffic on the highways, and make arrests for violations of the motor vehicle laws relating to size, weight and load of motor vehicles and trailers." K.S.A. 1978 Supp. 8-1910(d).

For purposes of answering your inquiry we separate our discussion into a consideration of those employees and agents acting within the scope of their authority and those agents and employees acting beyond the scope of their employment.

Section 3 of the Kansas Tort Claims Act provides that the State of Kansas will be "liable for damages caused by the negligent or wrongful act or omission of its employees while acting within the scope of their employment under circumstances where the governmental entity, if a private person, would be liable under the laws of this state."

However, neither the state nor its employees are liable even for negligent or wrongful acts within the scope of employment when involved in those activities listed in New Section 4 of the Act. Relevant to your inquiry, the state and its agents are not liable for damages resulting from "enforcement of or failure to enforce a law, whether valid or invalid, including, but not limited to, any statute, regulation, ordinance or resolution." Neither is the governmental entity or employee liable for damages resulting from the failure to provide, or the method of providing, police or fire protection." Thus, to the extent that the law enforcement activities of department of revenue employees and agents in arresting and escorting size and weight law violators are within the above exceptions, the state and its employees, about which you inquire are not liable for damages to third persons injured during the performance of such activities.

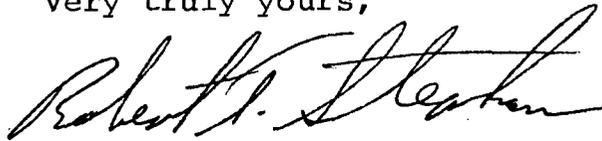
In addition, even if the activities of such designated employees and agents were deemed not within the above exceptions, it is the State of Kansas, not the employees and agents, which is ultimately liable for payment of damages for injuries caused by such employees so long as the employee is acting within the scope of employment. Where agents and employees are acting within the scope of their employment, they are indemnified for the payment of damages resulting from their tortious conduct. L. 1979, ch. 186 §9. The law also provides for representation by the Attorney General or agency counsel where an employee requests defense in actions filed pursuant to the Tort Claims Act (L. 1979, ch. 186 §8).

The result is contrary where an agent or employee is acting beyond the scope of his or her authority. Simply stated, under traditional rules of agency law, an employee acting beyond the scope of the employment is acting on his own and is liable in his individual capacity. This rule of law remains unchanged by the Kansas Tort Claims Act which merely incorporates this general rule of agency law.

Of course, without a specific fact situation, it cannot be determined under what conditions an agent or employee would be deemed to be acting beyond his authority. Suffice it to say that where employees are attempting to perform their assigned duties they are indemnified and, thus, protected from personal liability by the Kansas Tort Claims Act. Where employees and agents are engaged in activities unrelated to their assigned responsibilities and beyond the scope of their authority, they can be held to be personally liable for damages to persons injured by their tortious conduct. Naturally, the determination as to whether an employee or agent is acting within the scope of the employment will be made on a case-by-case basis.

In summary, Kansas law provides for indemnification of state employees and agents acting within the scope of their employment while performing law enforcement activities in connection with the size and weight laws pursuant to K.S.A. 8-1901 et seq.

Very truly yours,



ROBERT T. STEPHAN
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Bradley J. Smoot
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RTS:BJS:gk