



STATE OF KANSAS

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December 13, 1979

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ATTORNEY GENERAL OPINION NO. 79-297

Mahlon G. Weed
Colonel, USA (Ret)
Deputy Director
Division of Emergency Preparedness
Office of the Adjutant General of Kansas
2800 Topeka
Topeka, Kansas

Re: Militia, Defense and Public Safety--Emergency
Preparedness for Disasters--Use of School Buses
During State of Emergency

Synopsis: School buses may be used for emergency purposes pursuant to K.S.A. 48-901 et seq. where a disaster emergency has been declared according to law. Governmental entities and their employees are protected from tort liability in the performance of disaster relief and recovery duties pursuant to the Kansas Tort Claims Act and K.S.A. 48-915.

* * *

Dear Colonel Weed:

You request our opinion as to whether school buses may be used during a state of emergency. Specifically, you note that in preparing an emergency response plan for Coffey County, Kansas, to be used in the event of a disaster emergency at Wolf Creek Nuclear Power Plant, local officials have expressed concern about using the buses for other than school activities. You point out that K.S.A. 1978 Supp. 72-8301 et seq., the statutes relating to the transportation of students, do not specifically authorize such use. You asked if an amendment to these statutes

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might be required to allow use of school buses in emergency situations.

In light of the above circumstances you request our opinion as to four specific questions:

"1. Can school buses be used for emergency purposes either with or without a declared State of Disaster Emergency?

"2. Do local officials (county, city, special district) have the authority to direct the use of school buses for other than school activities, either before or after a State of Local Disaster Emergency has been declared?

"3. Can state or local officials be held liable for adverse actions resulting from the use of school buses for emergency purposes?

"4. Do you recommend any special legislation to clarify these points? If so, to what statute(s) should changes be proposed?"

In answer to your first question, under normal circumstances use of school buses by persons other than students or school personnel is restricted by K.S.A. 1978 Supp. 72-8301 et seq. [see specifically, K.S.A. 1978 Supp. 72-8302(b)]. However, under the Emergency Preparedness Act such buses could be used for other than purposes specified by that statute upon the declaration of a disaster emergency. Pursuant to K.S.A. 48-925(c)(2), the governor may, during a state of disaster declared under K.S.A. 48-924, "utilize all available resources of the state, government and of each political subdivision as reasonably necessary to cope with the disaster," and pursuant to K.S.A. 48-925(c)(4) the governor may, "subject to any applicable requirements for compensation under K.S.A. 48-933, commandeer or utilize any private property if the governor finds such action necessary to cope with the disaster."

These two provisions imply that whether school buses are owned by the school district or a private person, they are subject to use by the state during a declared state of emergency.

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In response to your second inquiry, it also is clear that local officials may direct the use of school buses during a state of emergency declared at the local level pursuant to K.S.A. 48-932. Note, however, that pursuant to K.S.A. 48-932(d) "no interjurisdictional disaster agency or any official thereof may declare a local disaster emergency, unless expressly authorized by the agreement pursuant to which the agency functions." K.S.A. 48-933(a), describing the duties of all persons within the state during disaster emergencies, states in pertinent part:

"Each person within this state shall conduct himself or herself and keep and manage his or her affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public successfully to meet disasters. This obligation includes appropriate personal service and use or restriction on the use of property during a declared state of local disaster emergency under K.S.A. 48-924 or a declared state of local disaster emergency under K.S.A. 48-932." (Emphasis added.)

Clearly this statute would allow the use of school buses for emergency purposes during a declared state of emergency. And if the use of school buses is made part of the local or inter-jurisdictional disaster emergency plan, this aspect of the plan will be activated upon the declaration of an emergency. K.S.A. 48-932(c). But it is important to note here, as in our answer to your first question, the power to so use the buses is limited to those occasions when a state of disaster has been declared. The provisions, K.S.A. 48-924 and K.S.A. 48-932, are activated only upon such declaration.

In answer to your third question regarding possible liability of state or local officials, pursuant to K.S.A. 48-915(b), neither state nor local officials

"shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity performed during the existence of such state of disaster emergency or other such state of emergency"

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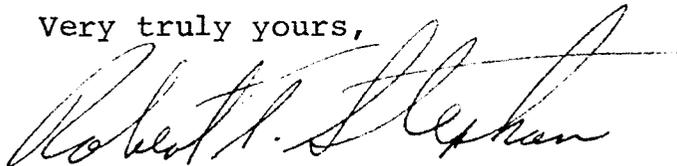
Therefore, such officials will not be liable for injuries resulting from the use of school buses where such use is pursuant to K.S.A. 48-924 or K.S.A. 48-932. This immunity is recognized by the Kansas Tort Claims Act, L. 1979, ch. 186, §§1-15, in Section 4, which provides in part:

"A governmental entity or an employee acting within the scope of his or her employment shall not be liable for damages resulting from: (1) any claim based upon emergency preparedness activities, except that governmental entities shall be liable for claims to the extent provided in article 9 of chapter 48 of the Kansas Statutes Annotated."

In regard to your final question, we do not feel any legislation is necessary to clarify the use of school buses. K.S.A. 1978 Supp. 72-8301 et seq. clearly specify the authorized use of school buses under normal circumstances. K.S.A. 48-924 and K.S.A. 48-932 clearly imply that school buses are within that class of property which may be used during a declared state of emergency.

In conclusion, school buses may be used during a declared state of emergency pursuant to K.S.A. 48-924 and K.S.A. 48-932. Where such a state of emergency has not been declared, use of school buses is limited to occasions contemplated by K.S.A. 1978 Supp. 72-8301 et seq. An "emergency," not declared pursuant to the Emergency Preparedness Act, is not so contemplated by that statute. We are further of the opinion that under K.S.A. 48-915 neither state nor local officials will be liable for injury caused from use of school buses pursuant to the Emergency Preparedness Act. Finally, given the clear and unambiguous language of both K.S.A. 48-905 et seq. and K.S.A. 1978 Supp. 72-8301 et seq., we are of the opinion that special legislation to clarify the use of school buses is unnecessary.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General