



STATE OF KANSAS

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September 22, 1980

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ATTORNEY GENERAL OPINION NO. 80-203

Mr. Leonard McAnarney  
Scranton City Attorney  
Lyndon, Kansas 66541

Re: State Departments; Public Officers, Employees--  
Kansas Tort Claims Act--Payment of Defense Costs  
of Employees of Governmental Entities in Civil  
Rights Cases

Synopsis: In actions brought against city officers and employees for alleged violations of a plaintiff's civil rights, the city must pay for the cost of providing a defense and any judgments and other costs incurred therefor, if the act or omission upon which the civil rights action is based is noncriminal, committed in good faith in the scope of defendants' employment, and if defendants reasonably cooperate in good faith in their defense. The city may pay for the cost of providing for its defense and the defense of its officers and employees and for payment of claims and judgments out of its general fund or other existing fund, or out of a special liability expense fund established for such purpose. Cited herein: K.S.A. 1979 Supp. 75-6102, 75-6110, 75-6116.

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Dear Mr. McAnarney:

You advise that the former city clerk for the City of Scranton has filed an action in federal district court alleging that her termination as city clerk by action of the governing body was illegal and in

violation of her civil rights. The plaintiff has named as defendants all of the members of the city's governing body, the mayor, and the city itself, and has asked for damages including back wages, vacation time and other benefits. You inquire whether the City of Scranton may use tax funds to pay the costs of providing a defense for the individual defendants or whether defendants must retain their own counsel and assume the costs of defending themselves.

We invite your consideration of K.S.A. 1979 Supp. 75-6116, which section provides, in pertinent part:

"If an employee of a governmental entity is or could be subject to personal civil liability for a loss occurring because of a noncriminal act or omission within the scope of his or her employment which violates the civil rights laws of the United States, and the act or omission was in good faith, and the employee reasonably cooperates in good faith in defense of the action . . . the governmental entity shall . . . pay or cause to be paid . . . all costs and fees incurred by the employee in defense thereof. A municipality may pay for the cost . . . in the same manner as provided in the Kansas tort claims act." (Emphasis added.)

As defined by section 2 of the tort claims act (K.S.A. 1979 Supp. 75-6102), the term "employee" includes within its meaning "any officer . . . or any member of a board, commission or council of a governmental entity, including elected or appointed officials." K.S.A. 1979 Supp. 75-6102(d). The term "governmental entity" includes within its meaning any "municipality," and "municipality" is defined as "any county, township, city, school district or other political or taxing subdivision of the state." K.S.A. 1979 Supp. 75-6102(b), (c). (Emphasis added.)

Based on the foregoing, since the lawsuit in question alleges a violation of the plaintiff's civil rights, and if the defendants' liability is based upon a noncriminal act or omission within the scope of defendants' "employment" committed in good faith and the defendants reasonably cooperate in their defense, it is our opinion that the city must pay for the cost of providing a defense and any judgments or other costs incurred therefor. K.S.A. 1979 Supp. 75-6110 provides, in part, that

"[p]ayments by municipalities for the cost of providing for its defense and the defense of employees pursuant to this act and for the payment of claims and other direct

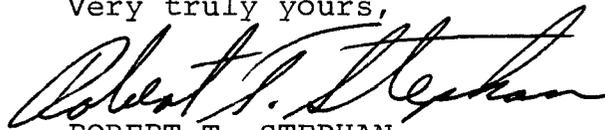
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and indirect costs . . . may be paid from the general or other existing fund of such municipality or from a special liability expense fund established for such purpose." (Emphasis added.) K.S.A. 1979 Supp. 75-6110(a).

Clearly, the use of city tax funds for the purpose of defending the city and its officers or employees in the lawsuit in question is expressly provided for by state law. The statute makes no requirement that the costs of defense or other such costs paid out of the general fund or other existing fund must have been provided for in the city's budget.

In summary, we conclude that in actions brought against city officers and employees for alleged violations of a plaintiff's civil rights, the city must pay for the cost of providing a defense and any judgments and other costs incurred therefor, if the act or omission upon which the civil rights action is based is noncriminal, committed in good faith in the scope of defendants' employment, and if defendants reasonably cooperate in good faith in their defense. The city may pay for the cost of providing for its defense and the defense of its officers and employees and for payment of claims and judgments out of its general fund or other existing fund, or out of a special liability expense fund established for such purpose.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Steven Carr  
Assistant Attorney General

RTS:BJS:SC:phf