



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 30

James Van Sickel
Division of Emergency Preparedness
Office of the Adjutant General
2800 Topeka
Topeka, Kansas 66611

Re: Militia, Defense and Public Safety -- Emergency
Preparedness For Disasters -- Regulations Regarding
Flood Insurance

Synopsis: The Adjutant General may not exercise his rule-
making powers inconsistent with powers granted the
governor regarding federally-subsidized flood in-
surance, pursuant to K.S.A. 48-938. Cited herein:
K.S.A. 48-904, 48-907, 48-923, 48-938, 42 U.S.C.A.
§5121, Pub. L. 93-288 (1974).

* * *

Dear Mr. Van Sickel:

On behalf of the Adjutant General you request our opinion as to whether the Division of Emergency Preparedness may promulgate an administrative regulation requiring any community to purchase federally subsidized flood insurance, as a condition to receiving federal and state flood disaster grants. Under the proposed regulation, if a community, not identified as a flood prone area, but which has received flood damage, refused to purchase the insurance, the community would be barred from receiving state-awarded grants (75% federal contribution to the state), if the community received flood damages again at any future time.

The Division of Emergency Preparedness was created pursuant to K.S.A. 48-904 et seq., to take responsibility for "the preparation for and the carrying out of all emergency functions . . . to prevent, minimize and repair injury and damage resulting from disasters." Generally speaking, the "power

of [an] administrative agency to adopt rules and regulations . . . must be within authority conferred, and if the regulation is beyond or conflicts with legislative authorization it is void." (Emphasis added.) Willcott v. Murphy, 204 Kan. 640 (1970). The Adjutant General is empowered under K.S.A. 48-907, for the purposes of administering the division of emergency preparedness and exercising the powers, duties and functions thereof, to "adopt, amend, and repeal rules or regulations," and "to do all acts and things, not inconsistent with the law, for the furtherance of emergency preparedness activities." However, this broad grant of administrative authority to adopt regulations is limited not only by the fact that the regulations must "not be inconsistent with the law," but K.S.A. 48-923 also provides that "[n]othing in this act shall be construed to . . . limit, modify or abridge the authority of the governor to . . . exercise any other powers vested him or her under the . . . statutes . . . of this state."

K.S.A. 48-938, a statute which concerns federal grants to families and individuals, the powers and duties of the governor, and the amount of the state grant contribution, provides that:

"Whenever the president of the United States, pursuant to Pub. L. No. 93-288 (May 22, 1974), the disaster relief act of 1974, has declared a major disaster to exist in this state, the governor is hereby authorized to apply for, accept and disburse grants from the federal government pursuant to section 408 of said disaster relief act of 1974, in order to meet the disaster-related necessary expenses or serious needs of individuals or families in this state who are adversely affected by such major disaster which cannot be met adequately from other means. In order to implement and administer such grant program and to make financial grants thereunder, the governor is hereby authorized to enter into an agreement with the federal government, or any officer or agency thereof, pledging the state to provide the state share of such financial grants, subject to the allocation of funds for such purpose by the state finance council from the state emergency fund, as provided in K.S.A. 1976 Supp. 75-3713. The state share of any grant made pursuant to this section to meet disaster-related necessary expenses and serious needs of individuals and families in this state shall not exceed twenty-five percent

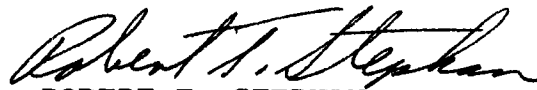
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(25%) of the actual cost of such expenses and needs as authorized by section 408 of said disaster relief act of 1974 and in any event shall not exceed one thousand two hundred fifty dollars (\$1,250) in the aggregate to any one individual or family with respect to any one major disaster."

Thus it is apparent that the governor is empowered by the legislature, to participate in the disaster relief program authorized under Pub. L. No. 93-288 (1974), 42 U.S.C.A. §§5121 et seq., whenever financial assistance is available to individuals or families pursuant to this law. You advise in your letter that, under federal law and policy, a community would not be eligible to receive federally-funded grants if the community was in an identified flood-prone area and refused to purchase flood insurance. The regulation proposed by the Adjutant General would extend this limitation by denying state contribution for a community which is not in a "flood-prone area," but which has been stricken by a flood and refuses to purchase flood insurance. Since Section 408 of Pub. L. No. 93-288 (1974), makes federally funded grants unavailable to a community if the state refuses to provide twenty-five percent (25%) of the disaster-related expenses to the victims, the regulation would preclude access to the federal grant moneys under Section 408, supra, which the governor is specifically authorized to seek pursuant to K.S.A. 48-938.

Therefore, we can only conclude that your agency's proposed regulation is clearly in excess of the agency's authority under K.S.A. 48-904 et seq., in that the regulation could have the effect of modifying or limiting express power conferred upon the governor by subsection (d) of K.S.A. 48-923.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJs:hle