



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 82- 173

Glenn Weaver, President
Walnut Watershed District No. 1
Route 3
Hiawatha, Kansas 66434

Re: Drainage and Levees -- Watershed Districts --
Directors; Personal Liability

Synopsis: A watershed district organized pursuant to K.S.A. 24-1201 et seq., is governed by a board of directors selected under K.S.A. 24-1211. An individual member of such a board is immune from personal liability for injuries to private individuals resulting as a consequence of his or her official acts. Cited herein: K.S.A. 24-1209, 24-1211, K.S.A. 1981 Supp. 75-6101.

* * *

Dear Mr. Weaver:

As President of the board of directors of Walnut Joint Watershed District No. 1, you request the opinion of this office on a question concerning the legal liability of yourself and other board members. In that you do not mention any specific situation, we assume your inquiry is a general one and concerns the potential liability of individual directors while they are serving on the board. This question is to be distinguished from the liability of the board itself, a matter governed by the Tort Claims Act, K.S.A. 1981 Supp. 75-6101 et seq.

The board of directors of the district is composed of persons selected by eligible voters of the district at the annual meeting. K.S.A. 24-1211. As the governing body of the district, they exercise powers set forth by K.S.A. 24-1209. Among the powers which could conceivably give rise to liability are the following:

"Third. To purchase, hold, sell and convey land and personal property and to execute such contracts as may, by its board of directors, be deemed necessary or convenient to enable it to properly carry out the purpose for which organized.

"Fourth. To construct, improve, maintain and operate works of improvement including such facilities and appurtenances as necessary for the conservation of soil, prevention of floods, disposal of water and the conservation, development and utilization of water for domestic, municipal, agricultural, industrial, recreational purposes and such other uses as may be authorized by the provisions of K.S.A. 82a-701 to 82a-725, inclusive, and any amendments thereto; . . .

. . . .

"Sixth. To employ such professional services and other assistance as is, by its board of directors, deemed essential. Soil conservation engineering services may be used whenever available.

. . . .

"Eighth. To acquire land and interests in land by gift, purchase, exchange or eminent domain; such power of eminent domain to be exercised within or without the boundaries of the district in like manner as provided by K.S.A. 26-501 to 26-516, inclusive, or any amendments thereto.

. . . .

"Tenth. To cooperate and contract with persons, firms, associations, partnerships and private corporations, and with other watershed districts, drainage districts, and cities of all classes of this state, and with drainage districts, watershed districts, or other public corporations organized for similar purposes in any adjoining state and with other local, state and federal governmental agencies and to enter into co-operative contracts and agreements with any such districts, corporations or agencies."

On behalf of the other board members, you wish to know the circumstances under which you could face personal liability for damages or injuries suffered by a person as a result of an action by the board.

In our opinion, the law governing your liability as a public officer has clearly been set forth by Kansas courts. A good restatement of the controlling principles is found in Kern v. Miller, 216 Kan. 724 (1975), where the court stated:

"As a general rule it has been stated that public officers, when performing the duties imposed upon them by statute and exercising in good faith the judgment and discretion necessary therefor, are not liable personally in damages for injuries to private individuals resulting as a consequence of their official acts. (Gresty v. Darby, 146 Kan. 63, 68 P.2d 649; Tillotson v. Fair, 160 Kan. 81, 159 P.2d 471.) As plaintiffs point out, however, this general rule of immunity is limited to acts performed within their jurisdiction. If public officers act outside the scope of their authority they may be held liable for damages resulting from their acts. (Cunningham v. Blythe, 155 Kan. 689, 127 P.2d 489; Tillotson v. Fair, supra.)" p. 728

See also Murphy v. City of Topeka, 6 Kan.App.2d 488 (1981), which states:

"The immunity of the sovereign from suit does not protect public officers from personal liability for their wrongful acts in excess of their official authority . . . since the acts of officials which are not legally authorized or which exceed or abuse their authority or discretion are not acts of the state'
72 Am.Jur.2d, States, Etc. §115, p. 504." Id.
at 494.

Both of these decisions were quoted with approval in the most recent Kansas decision in this area, Hendrix v. City of Topeka, 231 Kan. 113 (1982). In addition, Hendrix reaffirmed that while an injured person may bring an action against both an official and the governmental entity itself, the former will be dismissed from the action if it cannot be shown that the Kern v. Miller test is met (i.e. acts outside scope of authority).

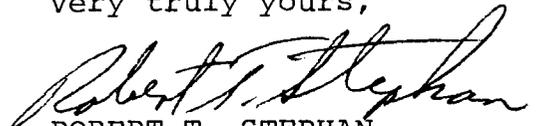
In view of these holdings, members of a district board would be liable only for those actions which were performed outside of their official authority or which went beyond the powers

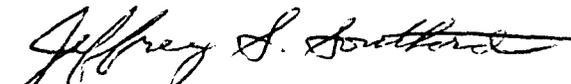
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given them by statute. As a determination of whether a particular factual situation falls within these limits is a question which only a court may determine, a blanket statement concerning an official's personal liability cannot be made. However, it may be said that an adherence to the statutory guidelines concerning the board's authority, together with a reliance on the advice of legal counsel, would go far toward eliminating problems of this type.

In conclusion, a watershed district organized pursuant to K.S.A. 24-1201 et seq., is governed by a board of directors selected under K.S.A. 24-1211. An individual member of such a board is immune from personal liability for injuries to private individuals resulting as a consequence of his or her official acts.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle