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ATTORNEY GENERAL OPINION NO. 84- 56

William R. Kauffman  
General Counsel  
Kansas Board of Regents  
Merchants National Bank Building,  
Suite 1416  
Topeka, Kansas 66612-1251

Re: Agriculture -- County Extension Council -- Liability  
Under Tort Claims Act

Agriculture -- County Extension Council -- Extension  
Agent; Other Employees; Status Under Tort Claims and  
Workmen's Compensation Acts

Synopsis: For the purposes of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., county extension councils are municipalities, with an existence separate from that of the county in which they are located and organized. Liability for the actions of an individual county agent is shared between the state and the extension council of the county. Council members themselves, as well as persons employed by the council (such as secretaries and janitors) and volunteers are considered to be employees of the council, which has sole liability for their acts.

For the purposes of the Kansas Workmen's Compensation Act, K.S.A. 44-501 et seq., county extension agents are employed dually by the county extension council and the director of extension at Kansas State University. Council members, secretaries and janitors are employees of the council, as are volunteers in the event the council files an election to extend coverage to them. Attorney General Opinion No. 75-125 is with-

drawn. Cited herein: K.S.A. 2-608, 2-610, 2-611,  
2-612, 2-615, 2-616, 44-401, K.S.A. 1983 Supp. 44-505,  
44-508, 75-6102, 75-6103, 7 U.S.C.A. §§343, 344, 345.

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Dear Mr. Kauffman:

As General Counsel for the Kansas Board of Regents, you request our opinion on two questions concerning the status of county extension councils and various persons connected with them under the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., and the Kansas Workmen's Compensation Act, K.S.A. 44-501 et seq. Specifically, you inquire whether the councils are municipalities or agencies of the state for the purposes of the Tort Claims Act, and, if the former, whether they are independent or a unit of the county. You also seek to determine the status of extension agents, council members, council employees (such as secretaries and janitors), and county extension volunteers under both acts.

The Kansas Tort Claims Act ("KCTA") contains the following definitions at K.S.A. 1983 Supp. 75-6102:

"(a) 'State' means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

"(b) 'Municipality' means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

"(c) 'Governmental entity' means state or municipality."

A single county extension council, having no connection with other county councils and not subject to the direction of a state-wide agency or authority, does not fall within the definition of "state" under the Tort Claims Act. Council members, who form the governing body which develops the educational extension programs of each county, are elected by the general electorate of each county, either at large or by county commissioner district, and not by the general electorate of the State. K.S.A. 2-611. The members come together to form a body dealing with only county-wide concerns and administering only countywide programs. K.S.A. 2-616. The principal statutory funding for the extension programs is derived from a tax "levied on all taxable property of the county." K.S.A. 2-610. These funds do not go to the state

treasurer to be evenly spread by the Kansas State University Director of Extension, but instead go directly to the county extension council from the county. K.S.A. 2-612.

Rather, a county extension council clearly falls under the "municipality" definition of the KTCA. While it may be argued that a council is an "instrumentality" of a state "institution," the "Memorandum of Understanding" in the County Extension Council Handbook (1983 Edition) distinguishes the Kansas State University Division of Extension from the county councils, placing them in the context of contractual parties, thus, precluding the possibility of an instrumentality situation. For decisions holding that county extension councils (formerly farm bureaus) are akin to municipalities such as school districts, see: Cloud County Farm Bureau v. Cloud County Commissioners, 126 Kan. 322, 325 (1982), State ex rel. v. Franklin County Farm Bureau, 172 Kan. 179, 195 (1951), State ex rel. v. Belt, 175 Kan. 330 (1953).

It is also our opinion that a county extension council cannot be said to be merely an agency or instrumentality of a county. As noted above, the members are directly elected by the residents of the county and are not appointed. Further, the council's budget has long been held not to be under the control of the county commissioners. Cloud County Farm Bureau, supra, 126 Kan. at 325, 326. The activities of the council are established by statute, and are accordingly not within the power of the county commission to control or direct. K.S.A. 2-616. Therefore, for the purposes of the KTCA, a county extension council is a municipality, independent of the control of the county, and is accordingly a "governmental entity" subject to the provisions therein.

The KTCA's general statement of liability appears at K.S.A. 1983 Supp. 75-6103(a):

"(a) Subject to the limitations of this act, each governmental entity shall be liable for damages caused by the negligent or wrongful act or omission of any 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."

By its terms, the KTCA has effected a codification of the common law of respondeat superior and the master-servant relationship. Kansas courts have long recognized that the controlling test in determining the existence of an agency is the right to control the servant. It is not the exercise of direction, supervision or control over a workman which determines whether he is a ser-

vant or an independent contractor, but the right to exercise such direction, supervision or control. Attorney General Opinion No. 82-215; Maxwell Bridge Co., 196 Kan. 219, 224 (1966); Hendrix v. Phillips Petroleum Co., 203 Kan. 140, 155 (1969). With these factors in mind, it remains to examine the status of each of the personnel groups you set forth.

To determine which entity, the municipality (county extension council) or the state (Kansas State University, Division of Extension), has the right to control county extension agents, two sources must be examined. The first is the county extension council statutes at K.S.A. 2-608 et seq. K.S.A. 2-615 states:

"The executive board of the county extension council and the director of extension, or the director's authorized representative, shall appoint a county extension agent and determine the amount of the extension agent's compensation. The extension agent shall be under the general supervision of the executive board and the director of extension. The director of extension of Kansas State university of agriculture and applied science shall determine the qualifications of each county extension agent."  
(Emphasis added.)

The second is the "Memorandum of Understanding" in the Handbook for County Extension Councils (at page 12). Section (C) sets out duties of the county extension council, with subsection (5) stating that a council will "employ as county extension agents only those persons who have been approved by the Director of Extension for the county concerned as each agent is a member of the faculty of the University and a cooperative employee of the United States of Agriculture." (Emphasis added.) Furthermore, section (D) of the memorandum states (p. 15):

"D. The Division of Extension and the [County Extension Council Executive] Board mutually agree:

"1. That each county Extension agent employed shall be a cooperative employee of the Division of Extension of Kansas State University, the United States Department of Agriculture and the County Extension Council and shall be satisfactory to the Director of Extension and to the Board.

. . . .

"9. That the general supervision of county extension agents as provided by law will be ac-

completed by conferences between the Director of Extension or his representatives and the agents at such times and places as is mutually convenient for them. . . ."

In our opinion, Kansas statutes and existing agreements have produced a unique dual control system for county extension agents, thus creating an equally unique question of liability under the KTCA. The act provides for accountability of the master when the employees are "acting within the scope of their employment." Presumably, as long as county extension agents act within the scope of their employment, both the county extension council and the state would share liability. The Restatement of Agency 2d at §226 confirms this possibility:

"Under the doctrine of respondeat superior a person can be the servant of two masters, not joint employers, at one time as to one act, if the service to one does not involve abandonment of service to the other." [See comment (b)].  
Voss v. Bridwell, 188 Kan. 643, 657 (1961).

While it is conceivable that situations will arise when the council or the university may require the agent to perform duties which may be inconsistent with the objective or business purpose of the other, and thus not within the scope of the agent's employment relationship with that entity, these situations would be rare, as the purposes of each are identical in the law. Liability for the activities of the county extension agents under the KTCA is therefore a shared one.

Personnel such as secretaries and janitors are employed by the county extension council pursuant to K.S.A. 2-611(6), which states that the council "may employ and fix the compensation of such persons as are necessary for the conduct of the business of the council." As such, they are clearly employees of the council for the purposes of the KTCA [K.S.A. 1983 Supp. 75-6102(d)], with no dual responsibility on the part of the state. Although neither council members themselves nor extension volunteers receive compensation, they are also included within the definition of employee found in the KTCA, which states:

"Employee" means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation." (Emphasis added.)

Liability for the acts of these persons, when acting within the scope of their authority or employment, accordingly rests with the council as an independent municipality, and not with the county or any agency of the state.

You present similar questions concerning the status of these same groups under the Kansas Workmen's Compensation Act. The scope of that act is set out at K.S.A. 1983 Supp. 44-505, which states:

"(a) Subject to the provisions of K.S.A. 44-506, the workmen's compensation act shall apply to all employments wherein employers employ employees within this state . . ."

"Employer" includes political subdivisions, municipalities, public corporations, and so forth, and so would include county extension councils. [K.S.A. 1983 Supp. 44-508(a)]. "Employee" is defined at subsection (b) of the same statute to include:

"'Workman' or 'employee' or 'work' means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include but not be limited to: . . . persons in the service of the state or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; volunteers in any employment, if the employer has filed an election to extend coverage to such volunteers."

Finally, the act makes employers liable for injuries "arising out of and in the course of employment." K.S.A. 44-501.

There can be no question that county extension council members and staff personnel such as secretaries and janitors serve as employees of the extension council for purposes of the Workmen's Compensation Act. However, due to the wording of subsection (b), volunteers doing extension work such as 4-H would not be covered unless the council files an election to extend coverage to them. While this decision would have to be made on a county-by-county basis, given the large-scale participation by volunteers in the work of county extension councils the issue may already have been resolved in most areas in favor of coverage.

As was the case earlier, a more difficult problem is presented by the county extension agents. Supervision of the agents is divided between the county extension councils and the director of extension at Kansas State University, with some involvement also present at the federal level, through the Department of Agriculture. A previous opinion of this office, No. 75-125, looked to the control given by law to this latter agency and concluded that extension agents were employees of the federal government, and thus not subject to the Kansas act. However, the Kansas statutes on the subject of control over county extension agents, as well as memorandums of understanding between county extension councils and the director of extension, clearly show that it is these two entities, rather than the federal government, which exercises both the right to control and actual control over such agents. Beyond the appropriation of funds which are transmitted through Kansas State University to the councils (7 U.S.C.A. §§343, 344, 345; K.S.A. 2-608), the level of federal participation is not comparable to that exercised by the state and county levels. While this does not preclude liability on the part of the federal government under a federal act, it is sufficient to bring the county extension agents within the scope of the Kansas act, as employees under the direction of Kansas employers. Accordingly, to the extent that it is inconsistent with this opinion, Attorney General Opinion No. 75-125 is withdrawn.

In conclusion, for the purposes of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., county extension councils are municipalities, with an existence separate from that of the county in which they are located and organized. Liability for the actions of an individual county agent is shared between the state and the extension council of the county. Council members themselves, as well as persons employed by the council (such as secretaries and janitors) and volunteers are considered to be employees of the council, which has sole liability for their acts.

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Very truly yours,

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