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July 22, 1985

ATTORNEY GENERAL OPINION NO. 85- 85

Steven L. Boyce
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541 Neosho; P.O. Box 452
Burlington, Kansas 66839

Re: Militia, Defense and Public Safety -- Emergency
Preparedness for Disasters -- County and City
Disaster Agencies; Duties of Local Sheriff

Counties and County Officers -- Sheriff -- Duties

Synopsis: K.S.A. 48-929 requires each county in this state to maintain a disaster agency responsible for emergency preparedness and coordination of response to disasters. Such agencies are required to prepare a disaster emergency plan for the area under their jurisdiction. In addition, local disaster agencies are required to prepare and distribute to all local officials a clear and complete statement of those officials' responsibilities in implementing such a plan. Although a disaster emergency plan is not formally activated until a declaration of disaster is accomplished according to law, there are some aspects of such a plan which must be carried out before a formal declaration of disaster. In our opinion, the emergency responsibilities of a local official under an appropriate disaster emergency plan may include certain acts which, of necessity, precede a formal declaration of a state of disaster emergency. Cited herein: K.S.A. 19-813; 48-904; 48-905; 48-924; 48-925; 48-929; 48-932.

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Dear Mr. Boyce:

As Coffey County Attorney and on behalf of Coffey County Sheriff, Earl B. Freeman, you have requested our opinion regarding the sheriff's obligation to work with "civil defense" or emergency preparedness and disaster agencies. We note that the former "civil defense division" of the office of the Adjutant General and local "councils of defense" are now referred to as the "division of emergency preparedness" and local "disaster agencies," respectively. See K.S.A. 48-905 and 48-929.

Specifically, you inquire as to the extent of the local sheriff's responsibility to assist emergency preparedness in the county. Your request is prompted by plans promulgated by the Coffey County Emergency Preparedness Office to deal with a possible disaster occurring at the Wolf Creek Nuclear Generating Station. The sheriff has received copies of the plan which detail his responsibilities in the event an emergency occurs at the Wolf Creek Station. You indicate that Sheriff Freeman would appreciate an opinion regarding his "required responsibilities in working with civil defense," and you note in particular that the sheriff is concerned with his obligation to dispatch information regarding "civil defense" functions.

The Kansas Emergency Preparedness for Disasters Act (K.S.A. 48-904 et seq.) defines "emergency preparedness" as:

" . . . the preparation for and carrying out of all emergency functions . . . to prevent, minimize and repair injury and damage resulting from disasters." K.S.A. 48-904(a).

A "disaster" is:

"the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause including . . . fire, . . . air contamination, . . . explosion . . ."
K.S.A. 48-904(d). (Emphasis added.)

Both the state division of emergency preparedness and local disaster agencies have the responsibility of preparing plans and carrying out emergency functions in the event of a disaster as defined by the statute. K.S.A. 48-929 provides that each county within the state shall "establish and maintain a disaster agency responsible for emergency preparedness and coordination of response to disasters . . ." Local disaster agencies are

required to prepare and keep current a local disaster emergency plan which is in accordance with the standards and requirements promulgated by the state division of emergency preparedness. K.S.A. 48-929(d). K.S.A. 48-929(e) further provides that:

"The county . . . disaster agency . . . shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster chain of command." (Emphasis added.)

In addition, K.S.A. 48-923 provides that nothing in the Emergency Preparedness for Disasters Act shall be construed to:

"(c) affect, other than during a declared state of disaster emergency, the jurisdiction or responsibilities of police forces, fire fighting forces, units of the armed forces of the United States, or of any personnel thereof, when on active duty; but the state disaster emergency plan and local and interjurisdictional disaster emergency plans shall place reliance upon such forces which are available for performance of functions related to a declared state of disaster emergency;" (Emphasis added.)

Thus, it is clear that the local disaster agency has the authority to require, and indeed, must rely on the services of local officials (including the sheriff) in planning to meet the demands of a disaster. One of the clear purposes of the Emergency Preparedness Act is to provide a comprehensive system for dealing with the exigencies which accompany any disaster. Such planning is necessarily dependent upon the cooperation of various local officials and individuals who are in a position to assist in minimizing damage or loss which may accompany a disaster.

Kansas statutes and an earlier opinion from this office make it clear that the declaration of a disaster, either at the state level (K.S.A. 48-924) or locally (K.S.A. 48-932), is necessary to activate the response and recovery aspects of disaster emergency plans and initiate the rendering of aid and assistance under such plans. See K.S.A. 48-932(c) and Attorney General Opinion No. 81-130 (enclosed). Opinion No. 81-130 concluded:

"The governor's power to act under a declaration of disaster emergency pursuant to K.S.A. 48-925 includes forced evacuation, but the authority so granted to the governor does not extend to the chairman of the board of county commissioners, the board of county commissioners, or mayor of a city. However, the powers authorized by K.S.A. 48-925 may be exercised by the governor only upon the declaration of a disaster emergency, as specified in the Emergency Preparedness for Disasters Act, and the powers granted local officials in local disaster emergencies may be exercised only after formal declaration of such disaster emergency, as provided in K.S.A. 48-932." (Emphasis added.)

Accordingly, the extraordinary powers granted to state and local officials to cope with disaster emergencies are to be utilized only in the event of a declared disaster. The aid to be provided by the sheriff as designated in the Coffey County plan is required after those plans have been activated by a declaration of disasters.

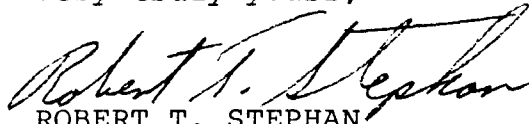
You indicate that the sheriff is particularly concerned with his responsibility to dispatch for "civil defense" in the absence of a declared emergency. A state of local disaster emergency may be declared formally by the chairman of the board of county commissioners as provided in K.S.A. 48-932. It is obvious that, as a matter of practical experience, someone will have to notify the chairperson of the county commission of the disaster or the eminent threat of a disaster. This is particularly true in case of an incident at the Wolf Creek Generating Station where the fact of the incident or the threat that it poses may not be immediately apparent to anyone other than those persons at the plant who are familiar with its operations. Any emergency preparedness plan which did not contain provisions for the notification of proper officials in the event of such an occurrence would be deficient.

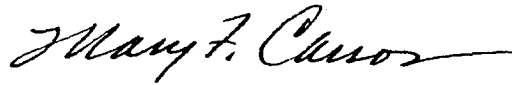
We additionally note that the Coffey County plan provides that the sheriff's office will be immediately notified in the event of an incident at Wolf Creek and that the sheriff's office will proceed to notify the relevant officials in order to activate the emergency response plans. Obviously, some of this activity will precede any formal declaration of disaster and thus precede the sheriff's absolute statutory obligation to cooperate in executing the disaster response plan. It appears, however, that the sheriff, as the county official elected to preserve the peace in

the county [K.S.A. 19-813], should perform the information dissemination which is necessary to activate the emergency response plans prior to a formal declaration of disaster emergency and that such responsibilities may be included in applicable disaster response plan.

In addition, as noted above, K.S.A. 48-929(e) requires the local disaster agency to prepare and distribute a statement of the emergency responsibilities of all local officials. It is apparent that some of the initial responses to a disaster will precede the formal declaration of a state of disaster by the appropriate official. In our opinion, a local official's "emergency responsibilities" may include such acts as dispatching information regarding the emergency or disaster to appropriate officials before a formal declaration of disaster has been issued.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mary F. Carson
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RTS:JSS:MFC:crw