



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 109

Elvin D. Perkins
Continuing Legal Education Commission
Kansas Judicial Center
301 West 10th Street
Topeka, Kansas 66612

Re: State Departments; Public Officers and
Employees--Kansas Tort Claims Act--Commissions
Established By Judicial Branch

Synopsis: Members and employees of the Continuing Legal
Education Commission are covered by the provisions
of the Kansas Tort Claims Act, including complete
immunity for the functions set out at K.S.A.
75-6104, and are entitled to a legal defense in the
event they are sued for acts or omissions in the
scope of their employment. Cited herein: K.S.A.
75-6101; 75-6102; 75-6104; 75-6108; 75-6109.

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Dear Mr. Perkins:

You have requested the opinion of this office on a question concerning the potential liability of employees and members of the Continuing Legal Education Commission. Created pursuant to Supreme Court Rule No. 801, the commission administers rules relating to continuing legal education of attorneys admitted to the practice of law in Kansas. In order to respond to concerns of commission members and employees as to the potential for tort liability in the performance of their duties, you request our opinion as to the application of the

Kansas Tort Claims Act, K.S.A. 75-6101 et seq., to the commission.

Supreme Court Rule No. 801 establishes the commission and provides as follows:

"(a) There is hereby created the Continuing Legal Education Commission. The Commission shall administer these rules subject to the supervision of the Supreme Court. The authority of the Commission shall include but not be limited to: (1) accrediting sponsors and programs and determining the number of hours of credit to be given for participation; (2) granting or withdrawing approval of all or less than all courses of a sponsor; (3) receiving and considering reports of attorneys; (4) granting waivers and extensions to complete requirements; (5) giving all notices and certifications required by this rule; and (6) adopting rules necessary to implement or administer the Supreme Court rules relating to continuing legal education.

"(b) The Commission shall consist of seven members, appointed by the Supreme Court, who are registered under Supreme Court Rule 208. The members shall include four practicing attorneys, a representative from each of the University of Kansas and Washburn University Schools of Law and a Justice or Judge. Of the members first appointed, two shall be appointed to a term of one year, two for two years, and three for three years. Thereafter, appointments shall be for three-year terms. Any vacancy occurring on the Commission shall be filled by the Supreme Court. A Commission member appointed to fill a vacancy shall be appointed to serve the unexpired term of the previous member. No member shall serve more than two consecutive three-year terms, except that any person initially appointed for

less than three years may serve two consecutive three-year terms thereafter.

"(c) The Commission shall meet at such times and places as it determines.

"(d) At the first meeting held in each annual attorney registration period a chairman and a secretary shall be elected from the membership of the Commission. Four members shall constitute a quorum for the transaction of business."

Nothing appears in the Supreme Court rules which indicates that commission members receive compensation for their services. However, the lack of any financial compensation to commission members is not dispositive of the question of liability, for the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., is worded so as to hinge upon the duties of the individual, not whether compensation is paid. At K.S.A. 75-6102(d), the act defines "employee" to include:

"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. 'Employee' does not include an independent contractor under contract with a governmental entity. 'Employee' does include former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity."

Given the language of subsection (a) of Supreme Court Rule No. 801, we have no difficulty in concluding that commission members and employees act "on behalf of or in service of a governmental entity," for the judicial branch of state government is clearly a governmental entity. See subsections (a) and (c) of K.S.A. 75-6102. Accordingly, commission members and employees are covered by the provisions of the act, including complete immunity for the functions set out at K.S.A. 75-6104, and are entitled to a legal defense in the event they are sued for acts or omissions in the scope of

their employ (K.S.A. 75-6108). In the further event that a judgment is rendered against them for such acts or omissions, they may look to the State of Kansas for indemnification. K.S.A. 75-6104.

Very truly yours,

ROBERT T. STEPHAN
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RTS:JLM:TRH:jm