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ATTORNEY GENERAL OPINION NO. 86- 122

Frank M. Rice
115 East Seventh Street
P.O. Box 2667
Topeka, Kansas 66601

Re: Insurance -- Firefighters Relief Act --
Firefighters Relief Fund Eligibility

Synopsis: The firefighters of the fire department operated by the Metropolitan Topeka Airport Authority (MTAA) are not eligible to participate in the Firemen's Relief Association, which is operated by and through the Kansas Insurance Department. For members of a fire department to be eligible, the fire department must be under the control of the governing body of an incorporated city, township, county or fire district. The MTAA is a body politic separate and distinct from any municipality, managed and controlled by an independent board of directors. Cited herein: K.S.A. 27-327 et seq.; 27-330; 27-331; K.S.A. 1985 Supp. 27-334; 40-1701.

* * *

Dear Mr. Rice:

As legal counsel for the Metropolitan Topeka Airport Authority (MTAA), you request our opinion regarding the fire department operated by the MTAA. Specifically, you are concerned with whether or not the firefighters of the MTAA Fire Department may participate in the Firemen's Relief Association. The Association is operated by and through the

Kansas Insurance Department, pursuant to the Firefighter's Relief Act, K.S.A. 1985 Supp. 40-1701 et seq.

K.S.A. 1985 Supp. 40-1701(a) states:

"As used in the firefighters relief act:

"(a) 'Firefighters relief association' or 'firemen's relief association' means an association incorporated under the laws of this state composed of members of a fire department which is (1) a public fire department under the control of the governing body of an incorporated city, township, county or fire district or (2) a private fire department operated by a not-for-profit corporation which provides all of the fire protection services for an incorporated city, township, county or fire district pursuant to a contract with the governing body thereof, and which in either case has fire apparatus and necessary equipment therefor that is in serviceable condition for fire duty and has a value of \$5,000 or more;"
(Emphasis added.)

The MTAA is a public airport authority created pursuant to K.S.A. 27-327 et seq. K.S.A. 27-330 states in part:

"(a) An authority created pursuant to the provisions of this act shall be a political and taxing subdivision separate and distinct from any other municipality, and shall be exempt from the payment of costs, damages, charges, taxes and fees levied by any other political or taxing subdivision of this state. An authority created hereunder shall have all of the powers, and only the powers, prescribed by this act.

"(b) An authority shall be managed and controlled by a five member board of directors. The board of directors of an authority shall be appointed within twenty (20) days after the adoption of the provisions of this act, and shall consist

of two members appointed by the governing body of the county, who shall be residents of the county residing outside the corporate limits of the city, and three members appointed by the mayor with the approval of the governing body of the city who shall be residents of the city. . . . From and after December 31, 1980, no member of the governing body of the city or the governing body of the county shall serve on the board of directors."
(Emphasis added.)

The MTAA may adopt a corporate seal, sue and be sued, enter into contracts, pass bylaws, hire officers and employees (i.e. a fire department), borrow money and condemn property through the exercise of eminent domain. K.S.A. 27-331. The MTAA may issue its own general obligation bonds. K.S.A. 1985 Supp. 27-334.


Pursuant to K.S.A. 27-327 et seq., the MTAA is a body politic separate and distinct from local governing bodies. K.S.A. 1985 Supp. 40-1701(a) requires a firefighters relief association to be composed of members of a fire department which is under the control of the governing body of an incorporated city, township, county or fire district.

In our opinion, the firefighters of the fire department operated by the MTAA are not eligible to participate in the Firemen's Relief Association operated by and through the Kansas Insurance Department. By definition, the MTAA and its fire department are not under the control of local government, a prerequisite of the Firefighters Relief Act, K.S.A. 1985 40-1701 et seq.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Thomas Lietz
Assistant Attorney General