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ATTORNEY GENERAL OPINION NO. 86- 124

The Honorable Ivan Sand
State Representative, 66th District
Route 1, P.O. Box 96
Riley, Kansas 66531

Re: Public Health -- Solid and Hazardous Waste --
Immunity from Liability for Hazardous Waste
Cleanups -- Propane Cleanup Liability

Synopsis: Kansas grants limited immunity from liability to parties rendering assistance in the cleanup of a propane accident. The immunity does not extend to parties who are responsible for the accident, compensated for rendering assistance, grossly negligent or who intentionally, recklessly or wantonly cause the accident. Cited herein: K.S.A. 65-3471; 65-3472; 49 C.F.R. 173.

* * *

Dear Representative Sand:

As State Representative of the 66th District, you request our opinion concerning liability for parties offering assistance at the time of an accident involving L.P. gas (propane). Specifically, you ask if the Kansas L.P. Gas Association (KLPGA) may establish an advisory "Hot Line" which would be free from civil liability. This service would be made available to the Kansas Highway Patrol, State Fire Marshall, Rural and Urban Fire Departments and other pertinent agencies.

Chapter 65 of the Kansas Statutes Annotated (Public Health) has several sections which are known as "Good Samaritan

Laws." One such section is located in K.S.A. 65-3471 et seq. Immunity from civil liability "for any acts or omissions at the scene of the emergency or accident in mitigating or attempting to mitigate the actual or threatened discharge of hazardous materials or cleanup thereof," is granted to "any person who renders assistance or advice concerning [the] emergency or accident." K.S.A. 65-3472(a).

K.S.A. 65-3471 states:

"When used in this act, the following words and phrases shall have the following meanings:

"(a) 'Discharge' means and includes leakage, seepage or other release.

"(b) 'Hazardous materials' means a substance or material which has been determined by the secretary of the United States department of transportation to be capable of posing an unreasonable risk to health, safety and property when transported in commerce and which has been so designated.

"(c) 'Person' means and includes any individual, partnership, corporation, association or other entity."

The United States Department of Transportation (DOT) defines gases which are hazardous materials as follows:

"The term 'compressed gas' shall designate any material or mixture having in the container an absolute pressure exceeding 40 p.s.i. at 70° F. or, regardless of the pressure at 70° F., having an absolute pressure exceeding 104 p.s.i. at 130° F.; or any liquid flammable material having a vapor pressure exceeding 40 p.s.i. absolute at 100° F. as determined by ASTM Test D-323." 49 CFR 173.300(a).

According to a KLPGA expert, propane, the material for which the KLPGA "Hot Line" would be offering assistance or advice, fits within this DOT definition. Therefore, the KLPGA "Hot Line" would be included in the K.S.A. 65-3472 exception for

civil liability for any propane accident which is a result of a "discharge" as defined in K.S.A. 65-3471.

The immunity that the "Hot Line" is entitled to under K.S.A. 65-3472(a) is limited. K.S.A. 65-3472(b) and (c) state::

"The immunity provided in subsection (a) shall not apply to any person (1) whose act or omission caused in whole or in part such actual or threatening discharge and who would otherwise be liable therefor; or (2) who receives compensation other than reimbursement for out-of-pocket expenses for its services in rendering such assistance or advice.

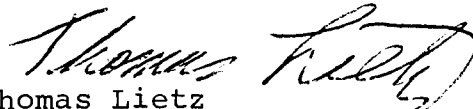
"Nothing in this section shall be construed to limit or otherwise affect the liability of any person for damages resulting from such person's gross negligence or from such person's reckless, wanton or intentional misconduct."

In conclusion, K.S.A. 65-3472 provides limited immunity from civil liability for any party who offers help in a propane accident. In our opinion, the Kansas L.P. Gas Association "Hot Line" qualifies for this limited immunity.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



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