



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN
ATTORNEY GENERAL

January 22, 1987

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ATTORNEY GENERAL OPINION NO. 87- 13

Mr. James E. Flory
District Attorney, Seventh Judicial District
Judicial Law Enforcement Center
111 E. 11th Street
Lawrence, Kansas 66044

Re: State Departments; Public Officers and
Employees--Kansas Tort Claims Act--Office of
District Attorney

District Officers and Employees--District
Attorneys--Application of Kansas Tort Claims Act

Synopsis: District attorneys and their agents are state
employees for purposes of the Kansas Tort Claims
Act. Cited herein: K.S.A. 22a-101, 22a-106,
25-2505, 75-6101, 75-6102.

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Dear Mr. Flory:

As District Attorney for the Seventh Judicial District, you
have requested our opinion concerning the applicability of the
provisions of the Kansas Tort Claims Act, K.S.A. 75-6101 et
seq., to the offices of district attorney.

The Kansas Tort Claims Act distinguishes the State from a
municipality in K.S.A. 75-6102(a), (b). As used in the Act,
"State" means "any department or branch of state government,
or any agency, authority, institution or other instrumentality
thereof." K.S.A. 75-6102(a). A county is included in the
definition of "municipality". It is our opinion that district

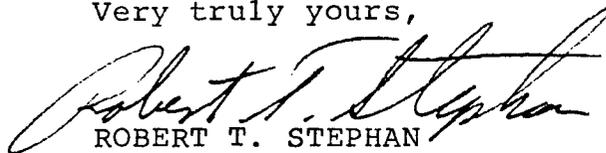
attorneys and their agents are state employees rather than county employees for purposes of the Act.

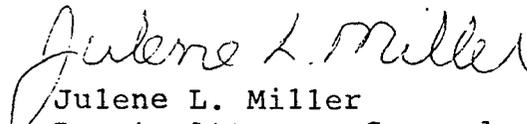
The office of district attorney is established in the third, tenth, eighteenth and twenty-ninth judicial districts by K.S.A. 22a-101, and in the seventh judicial district by K.S.A. 22a-108. Sections 22a-101 and 22a-108 both declare the district attorney to be an executive officer in the judicial district in which he is elected. District attorneys are elected as state officers, as defined in K.S.A. 25-2505, rather than as county officers. Sections 22a-101 and 22a-108 further provide that "in no event, shall [the] district attorney be deemed an officer of any county." We believe that this statutory provision is a clear indication that the district attorney is an employee of the state, as opposed to an employee of a municipality, for purposes of the Act.

Agents of the district attorney may be appointed pursuant to K.S.A. 22a-106. Such district attorney may appoint assistant district attorneys, deputy district attorneys, stenographic, investigative and clerical employees. It is our opinion that insofar as these persons serve as agents for the district attorney, as opposed to serving the county, then those agents are state employees for purposes of the act.

In conclusion, we believe that district attorneys and their agents are employees of the state for purposes of the Kansas Tort Claims Act.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

RTS:JLM:jm