



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 31

Kenneth F. Kern
Executive Director
Kansas State Conservation Commission
109 S.W. 9th Street, Room 300
Topeka, Kansas 66612

Re: State Departments; Public Officers and
Employees--Kansas Tort Claims Act--Conservation
Districts

Synopsis: The Kansas Conservation Commission is an agency of the state. Even though district supervisors and district employees perform functions locally, they act as members of a collective effort to conserve state resources. Therefore, they are to be considered state employees for purposes of the Kansas tort claims act. Our opinion in this matter is to be narrowly construed, as many units of government perform what are essentially parts of an overall state function. However, other such organizations are more easily analyzed by traditional tests. Cited herein: K.S.A. 2-1902; 2-1904; 2-1906; 2-1907; K.S.A. 1986 Supp. 2-1907b; K.S.A. 2-1907c; 2-1908; 75-6102; 75-6117.

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Dear Mr. Kern:

As Executive Director of the State Conservation Commission, you have requested our opinion regarding the Kansas tort claims act, K.S.A. 75-6101 et seq. Specifically, you inquire whether conservation district supervisors and

employees are considered as employees of the state for purposes of the tort claims fund, established by K.S.A. 75-6117.

While the Kansas tort claims act establishes the liability of all governmental entities and governmental employees, providing exceptions to liability, a distinction is made between state and municipal employees for purposes of defense coverage under the tort claims fund. To be covered by that fund, a person must be an employee of the state as opposed to an employee of a municipality. K.S.A. 75-6117(b). K.S.A. 75-6102(a) defines "state" as:

"[T]he state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof."

K.S.A. 75-6102(d) defines "employee" as,

"[A]ny 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."

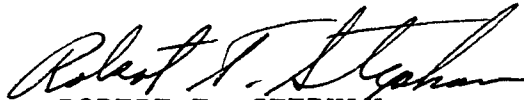
Finally, "governmental entity" is defined at K.S.A. 75-6102(c) as the state or a municipality. Under the tort claims act, an agency of the state is to be treated as the state. The State Conservation Commission is an agency of the state, K.S.A. 2-1904, and therefore is to be included when using the term "state" in the tort claims act. The relevant question then becomes whether district supervisors and district employees are "employees" of the Commission, or of a "board, commission, committee, division, department, branch or council" of the Conservation Commission.

Supervisors and other employees of the individual districts act in the service of the state. While they perform functions which benefit the local geographical area, see generally K.S.A. 2-1908, they act as members of the collective effort to conserve the state's natural resources. We believe that serving the broad state function, as determined by the legislature in K.S.A. 2-1902, is the better indicator of whether the district supervisors and employees are state or

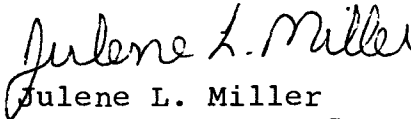
municipal employees. Other tests would not dispose of the question. For example, a funding test would leave the matter open to dispute, as funding is provided by both the state of Kansas and the county in which the district lies. K.S.A. 1986 Supp. 2-1907b; K.S.A. 2-1907c. A control test would likewise be unavailing, for even though supervisors are elected locally, K.S.A. 2-1906, they may be removed by the State Conservation Commission for neglect of duty or malfeasance in office. K.S.A. 2-1907.

In conclusion, it is our opinion that the Commission is an agency of the state. Even though district supervisors and employees perform their duties locally, they act as members of a collective effort to accomplish a state program. They are therefore to be considered state employees for purposes of the Kansas tort claims act. Our opinion in this matter is to be narrowly construed, as many units of government perform what are essentially parts of an overall state function. However, other such organizations are more easily analyzed by traditional tests.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

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