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ATTORNEY GENERAL OPINION NO. 88- 2

The Honorable Ben Foster
Chairman, Joint Committee on
Special Claims Against the State
Room 545-N, State Capitol
Topeka, Kansas 66612-1586

Re: Legislature--Claims Against the State--State Agency
Heads Authorized to Pay for Certain Property Loss
or Damage; Limitations

Synopsis: Under the provisions of subsection (c) of K.S.A.
46-922, the head of a state agency may pay up to
\$500 to persons for loss or damage to property,
where such loss or damage was caused by the
negligence of the state or any agency, officer or
employee thereof. Claims for personal injuries may
not be paid under the provisions of the aforesaid
statute. Cited herein: K.S.A. 46-922.

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Dear Representative Foster:

You request our interpretation of K.S.A. 46-922.
Specifically, you ask whether the head of a state agency may
pay a claim for personal injuries pursuant to the provisions
of the aforesaid statute.

K.S.A. 46-922 authorizes state agency heads to pay certain
claims for property loss or damage, and provides as follows:

"(a) As used in this section and in K.S.A.
46-923 and amendments thereto, the term

'state agency' shall have the meaning ascribed thereto in K.S.A. 75-3701 and amendments thereto.

"(b) The head of any state agency is authorized to make payment to the officers or employees of such state agency for property damage or loss occurring while that officer or employee is acting within the scope of such office or employment if such property loss or damage, in the opinion of the state agency head, did not occur as a result of negligence of the claimant.

"(c) The head of any state agency is authorized to make payment to any other person for property damage or loss occurring under circumstances which establish, in the state agency head's opinion, that such damage or loss was caused by the negligence of the state or any agency, officer or employee thereof. The secretary of social and rehabilitation services is authorized to make payment from funds appropriated to the secretary for the homemaker program to any person for property damage or loss caused by an act of a homemaker employed by the secretary.

"(d) No payment shall be made under this section on any claim for an amount in excess of \$500 or in any amount on a claim by a person who is an insurer and who is making the claim as a subrogee for all or part of any amount paid to such person's insured."

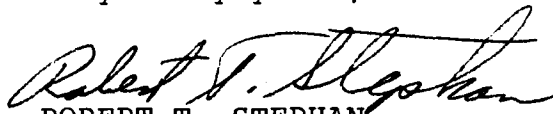
As subsection (c) of the above-quoted statute indicates, the head of a state agency may pay up to \$500 to persons for loss or damage to property, where such loss or damage was caused by negligence of the state. There is no indication that claims for personal injury may be paid under subsection (c) of the statute, and the supplemental note which explained the statute when it was first enacted in 1980 states as follows:

"H.B. 2796 authorizes the secretary of corrections to pay claims up to \$250 for loss or damage of an inmate's personal property caused by the negligence of the state. Authorization is also granted to heads of state agencies to pay similar claims up to \$500." (Emphasis added.)

It should be noted that the above-quoted supplemental note was specifically referred to by the committee chairman during hearings on 1980 House Bill No. 2796. Our research has failed to disclose any indication that the legislature intended to include claims for personal injuries within the provisions of subsection (c) of K.S.A. 46-922.

In summary, it is our opinion that under the provisions of subsection (c) of K.S.A. 46-922 the head of the state agency may pay up to \$500 to persons for loss or damage property, where such loss or damage was caused by the negligence of the state or any agency, officer or employee thereof. Claims for personal injuries may not be paid under the provisions of the aforesaid statute.

Very truly yours,



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