



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 8, 1988

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 88-93

Ronald S. Reuter
Roeland Park City Attorney
P.O. Box 7933
Overland Park, Kansas 66207

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

Synopsis: A member of a redevelopment committee of a city is an "employee" of the city, as that term is defined in subsection (d) of K.S.A. 75-6102. Accordingly, a member of such a committee is covered by the provisions of the Kansas tort claims act, including complete immunity for the functions set out at K.S.A. 75-6104, and is entitled to a legal defense in the event he or she is sued for acts or omissions in the scope of his or her employment. In the further event that a judgment is rendered against a committee member for such acts or omissions, he or she may look to the city for indemnification. Cited herein: K.S.A. 1987 Supp. 75-6102; K.S.A. 75-6104; 75-6108; 75-6109.

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Dear Mr. Reuter:

You request our interpretation of the Kansas tort claims act, K.S.A. 75-6101 et seq. Specifically, you ask whether a member of a redevelopment committee, which committee acts as a liaison between the city council and persons having an interest in redevelopment, is covered by the provisions of the

aforesaid act. You indicate that the redevelopment committee is not established by ordinance or resolution.

Subsection (d) of K.S.A. 1988 Supp. 75-6102 defines the term employee as follows:

"'Employee' means any 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. 'Employee' does not include an independent contractor under contract with a governmental entity. 'Employee' does include former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity."

In Bonewell v. The City of Derby, 236 Kan. 589 (1985), the Kansas Supreme Court considered the question of whether the Derby Jaycees, who were administering a softball program for the city of Derby, were "employees" as defined in K.S.A. 1987 Supp. 75-6102(d). The Court found that the Jaycees organized the use of a baseball field under a "loose arrangement" with the city wherein they agreed to "manage" the men's softball league. In holding that the Jaycees were employees of the city for purposes of the tort claims act, the Court stated as follows:

"The statute now before us, 75-6102(d), provides us with a broad definition of 'employee.' It includes persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation. The only exclusion from the definition is that of an independent contractor, and clearly the Jaycees do not fall within that exception. The Jaycees were simply assisting the City in carrying out the public purposes for which Riley Field was built and maintained. The Jaycees, in our opinion, clearly fall within the statutory definition of 'employee.' We

conclude that the trial court was correct
in so holding." 236 Kan. at 593.

In our judgment, the above-cited case is dispositive of the question you raise. Even though the redevelopment committee is not established by city ordinance or resolution, a member thereof acts on behalf or in service of a governmental entity in an official capacity and is an "employee" of the city, as that term is defined in subsection (d) of K.S.A. 75-6102. Therefore, a member is covered by the provisions of the tort claims act, including complete immunity for the functions set out at K.S.A. 75-6104, and is entitled to a legal defense in the event he or she is sued for acts or omissions in the scope of his or her employment (K.S.A. 75-6108). In the further event that a judgment is rendered against a committee member for such acts or omissions, he or she may look to the city for indemnification. K.S.A. 75-6109.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm