



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89-15

Harold T. Walker, City Attorney
9th Floor, Municipal Office Building
One Civic Center Plaza
Kansas City, Kansas 66101

Re: State Departments; Public Officers and
Employees--Kansas Tort Claims Act; Defense and
Payment of Liability and Defense Costs of Employees
in Civil Cases; Judgment; Punitive Damage Award,
Payment Of

Synopsis: Subsection (c) of K.S.A. 1988 Supp. 75-6116
generally provides a governmental entity may pay a
part of any judgment taken against an employee for
punitive or exemplary damages if the government
entity finds three conditions exist. The statute
requires that a judgment be rendered before the
governmental entity may consider whether the
conditions attendant to payment have been met.
Cited herein: K.S.A. 1988 Supp. 75-6116.

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Dear Mr. Walker:

As City Attorney for Kansas City, Kansas, you request an
opinion regarding subsection (c) of K.S.A. 1988 Supp. 75-6116
that generally provides a governmental entity may pay a part
of any judgment taken against an employee for punitive or
exemplary damages if the governmental entity finds three
conditions exist. You inquire whether the governmental entity
may determine whether the conditions are met prior to a
judgment being rendered.

Subsection (c) of the statute states:

"Notwithstanding any other provisions of law to the contrary, a governmental entity may pay any part of a judgment taken against an employee of the governmental entity that is for punitive or exemplary damages for the violation of the civil rights laws of the United States if the governmental entity finds that:

"(1) The action or proceeding arose out of an act or omission in the scope of the employee's employment;

"(2) the employee reasonably cooperated in good faith in the defense of the claim; and

"(3) the employee's act or omission was not the result of actual fraud or actual malice." (Emphasis added.)

Our task is one of statutory construction. In construing a statute, the first step is to look to the language of the statute and ascribe to it the plain meaning of the terms. Young v. Sedgwick County, 660 F. Supp. 918 (D. Kan., 1987) citing Calutti v. Franklin, 439 U.S. 379, 99 S.Ct. 675, 58 L.Ed.2d 596 (1979). Focusing on the underscored language above, the statute provides that a governmental entity may pay any part of a judgment. A judgment is defined in the procedural provisions of chapter 60 of the Kansas statutes, K.S.A. 1987 Supp. 60-254, as the final determination of the rights of parties in an action. The Kansas Supreme Court has long defined a final judgment as one that decides and disposes of the whole merits of the case and reserves no further action by the court. Connell v. State Highway Commission, 192 Kan. 371, 373 (1964) citing Brown v. Gelena Mining & Smelting Co., 32 Kan. 528 (1884). Once defined the term "judgment" imposes a requirement that there be a final determination. The statute further requires that the judgment taken against an employee of the governmental entity be one that is for punitive or exemplary damages that result from a civil rights violation.

The statute in question contains no ambiguity; it clearly requires that a judgment exist before the governmental entity can consider the conditions attendant to the payment of that

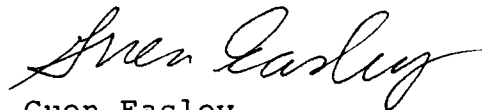
judgment. And in the absence of an ambiguity, where the language is clear and the purpose appears with reasonable certainty, there is no need to resort to further rules of construction. Pillsbury Co. v. Atchison, Topeka and Santa Fe Ry. Co., 548 F. Supp. 28 (D.C. Kan., 1982). For these reasons we opine that the legislature intended the plain meaning of the statute as expressed, requiring that a judgment exist prior to consideration of the conditions attendant to the payment thereof. With reasonable certainty one can surmise from the language used in the statute that the governmental entity is to review the decision of the court, the transcripts, and any other pertinent materials in order to consider the conditions attendant to the payment of the damages.

In conclusion, it is our opinion that subsection (c) of K.S.A. 1988 Supp. 75-6116 requires that a judgment be rendered before the governmental entity can consider the conditions attendant to the payment of punitive or exemplary damages of a judgment that resulted from a civil rights violation. This conclusion necessarily precludes a governmental entity from making a determination that the requisite conditions attendant to the payment of a judgment have been met prior to a final determination of the action against the employee.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General

RTS:JLM:GE:jm