



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 90- 28

Vernon Steerman
Osborne County Attorney
Courthouse, 2nd Floor
Osborne, Kansas 67473

Re: Procedure, Civil, For Limited Actions -- Small
Claims Procedure -- Trial of Actions; County as
Party; Representation of County

Synopsis: Where a filing otherwise complies with the
requirements of K.S.A. 61-2701 et seq., the
board of county commissioners may authorize
representation of the county in small claims
proceedings by a full-time salaried employee other
than the county attorney. Cited herein: K.S.A.
19-101; 19-212; 19-701; 61-2701; K.S.A. 1989
Supp. 61-2703; 61-2704; 61-2707; K.S.A. 77-201.

* * *

Dear Mr. Steerman:

As Osborne County Attorney you request our opinion on
whether the board of county commissioners may authorize the
county ambulance director to file small claims procedures on
behalf of the county in order to collect debts arising from
unpaid ambulance service fees, when such fees are within the
dollar limitation imposed by the small claims act and such
filings do not exceed 10 claims per calendar year.

K.S.A. 61-2701 et seq. contain the provisions for small claims proceedings. K.S.A. 1989 Supp. 61-2704 discusses commencement of a small claims action:

"An action seeking the recovery of a small claim shall be considered to have been commenced at the time a person files a written statement of the person's small claim with the clerk of the court. . . ."
(Emphasis added).

Thus, a small claims proceeding is commenced when a "person" files a written statement with the clerk of the court. K.S.A. 1989 Supp. 61-2703(b) defines person:

"'Person' means an individual, partnership, corporation, fiduciary, joint venture, society, organization or other association of persons." (Emphasis added).

The initial issue becomes whether a county fits within the definition of a person set forth at K.S.A. 1989 Supp. 61-2703(b). K.S.A. 77-201 Thirteenth defines "person" to include bodies political and corporate. Counties are not business corporations. Clapham v. Board of Commissioners of Miami County, 158 Kan. 685 (1944). However, a county is a body corporate and politic. K.S.A. 19-101. See also Board of County Commissioners of Sedgwick County v. Lewis, 203 Kan. 188 (1969). Pursuant to K.S.A. 19-101, statutory construction rules and Kansas case law, a county may be considered a municipal corporation for some purposes. K.S.A. 1989 Supp. 61-2704 permits persons to file small claims proceedings and K.S.A. 1989 Supp. 61-2703(b) defines person to include corporations. There is no indication that the act prohibits utilization of small claims proceedings by municipal corporations such as counties. Thus, it appears that a county may utilize the provisions of K.S.A. 61-2701 et seq.

The secondary issue becomes representation of the county. Generally, the county attorney must represent the legal interests of a county. K.S.A. 19-701 et seq. However, K.S.A. 1989 Supp. 61-2707(a) states that "no party in any such action shall be represented by an attorney prior to judgment. . . ." Thus, a county attorney is precluded from appearing on behalf of the county in a small claims proceeding.

K.S.A. 19-212 authorizes the board of county commissioners to "examine and settle all accounts, . . . represent the county . . . and the management of the business and concerns of the county, in all cases where no other provision is made by law." Appointment of a non-lawyer to represent the county in a small claims proceeding appears to be a proper exercise of the management power vested in the board of county commissioners. K.S.A. 1989 Supp. 61-2703(a)(2) generally discusses situations wherein an employee may represent an entity in small claims proceedings and states that a small claim is not

"a claim based on an obligation or indebtedness allegedly owed to a person other than the person filing the claim, where the person filing the claim is not a full-time, salaried employee of the person to whom the obligation or indebtedness is allegedly owed;"

Where the person filing the small claim is a full-time salaried employee of the county, and the filing otherwise complies with the requirements of K.S.A. 61-2701 et seq., it is our opinion that the board of county commissioners may authorize representation of the county in a small claims proceeding by a person other than the county attorney.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas