



STATE OF KANSAS

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January 23, 1991

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ATTORNEY GENERAL OPINION NO. 91- 4

Mr. Richard R. Yoxall  
Yoxall, Antrim and Yoxall  
Counsel for the Southwest Plains  
Regional Service Center  
P.O. Box 1278  
101 W. 4th Street  
Liberal, Kansas 67901

Re: Cities and Municipalities--Insurance; Group-Funded  
Liabilities Pools--Authorization of Municipalities  
to Pool Liabilities; School District Interlocal  
Agreement Cooperatives

Schools--Organization, Powers and Finances of  
Boards of Education--Interlocal Cooperation  
Agreements; Nature of Separate Legal Entity;  
Municipality

Synopsis: Based upon our review of specific interlocal  
agreements entered into pursuant to K.S.A. 12-1901  
et seq. and K.S.A. 1990 Supp. 72-8230 it is our  
opinion that the separate legal entities created by  
these specific agreements may be characterized as  
an "agency, authority, institution or other  
instrumentality" of a school district and thus  
these entities meet the definition of a  
municipality pursuant to K.S.A. 1990 Supp. 12-2616  
et seq. and K.S.A. 1990 Supp. 75-6102. While  
entities created pursuant to K.S.A. 12-2901 et  
seq. and K.S.A. 1990 Supp. 72-8230, may generally  
fall within the definition, each situation,  
agreement and relationship must be examined on its  
own merits. Cited herein: K.S.A. 1990 Supp.

12-2616; 12-2617; K.S.A. 12-2901; K.S.A. 1990 Supp.  
72-8230; 75-6102.

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Dear Mr. Yoxall:

As counsel for the Southwest Plains Regional Service Center Health Insurance Group, an entity created pursuant to the authority set forth at K.S.A. 12-2616 et seq., and K.S.A. 75-6102 et seq., you request our opinion as to how those statutes relate to an entity created pursuant to K.S.A. 72-8230. You ask that we address whether specific educational cooperatives are municipalities within the scope of K.S.A. 1990 Supp. 12-2616 et seq. and you request our general opinion on whether educational cooperatives and/or service centers formed pursuant to K.S.A. 12-2901 et seq. and K.S.A. 72-8230 are "municipalities" as defined in K.S.A. 75-6102 and amendments thereto.

K.S.A. 1990 Supp. 12-2616 et seq. concerns group-funded liability pools: "Five or more municipalities as defined in K.S.A. 75-6102, and amendments thereto, may enter into agreements. . . ." K.S.A. 1990 Supp. 12-2717. Thus, in order to determine whether an entity may utilize the provisions of K.S.A. 1990 Supp. 12-2616 et seq., it becomes necessary to examine the definition of municipality set forth in K.S.A. 1990 Supp. 75-6102.

K.S.A. 1990 Supp. 75-6102 defines municipality as follows:

"(b) 'Municipality' means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof." (Emphasis added).

The entities in question have been created pursuant to K.S.A. 12-2901 et seq. (the interlocal cooperation act) and K.S.A. 1990 Supp. 72-8230. These provisions permit school districts to enter into interlocal corporation agreements "for the purpose of jointly and cooperatively performing the services, duties, functions, activities, obligations or responsibilities which are authorized or required by law to be performed by school districts of this state." The issue is whether entities created pursuant to this authority may be

defined as municipalities for the purposes of K.S.A. 1990 Supp. 12-2616 et seq.

The definition of a municipality contained in K.S.A. 1990 Supp. 75-6102, includes a school district. However, as discussed in Attorney General Opinion No. 89-43, entities created pursuant to K.S.A. 1990 Supp. 72-8230 are not school districts. Rather, they are entities created pursuant to the authority of school districts. While they perform many of the functions of a school district and act on behalf of school districts, they were not created in the same manner as school districts nor do they have the broad authority granted to such districts. Thus, entities created pursuant to K.S.A. 12-2901 et seq. and K.S.A. 1990 Supp. 72-8230 cannot be defined as school districts for purposes of K.S.A. 1990 Supp. 75-6102. We must therefore examine whether such entities may be defined as a "political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof."

The question of whether an entity is a municipal corporation asks, in part, whether the nature of the corporation is voluntary or involuntary; whether a charter exists; and whether the purpose of the corporation is solely as a governmental agency. McQuillin, Corporations, Nature and Kinds of Municipalities § 2.25 (1987).

Quasi-municipal corporations are a distinct category of municipalities and generally possess a limited degree of authority:

"[T]hose organizations that are deemed corporations but which are held not municipal corporations, strictly speaking, but which resemble municipal corporations in some respect. As the term is used here, what is meant is a corporation created or authorized by the legislature that is merely a public agency endowed with such of the attributes of a municipality as may be necessary in the performance of its limited objective. In other words, a quasi-municipal corporation is a public agency created or authorized by the legislature to aid the state in, or to take charge of, some public or state work, other than community government, for

the general welfare. . . ." Id. at §  
2.13.

We have thus far not found legal authority discussing the issue of whether an entity created pursuant to an interlocal agreement is a political or taxing subdivision of the state. However, by examining the above referenced authority, and the nature of those entities which have been declared a political or taxing subdivision of the state, we conclude that a school district service center created pursuant to the authority set forth at K.S.A. 12-2901 et seq. and K.S.A. 1990 Supp. 72-8230 does not qualify as a political or taxing subdivision of the state. Rather, such an entity appears to be more readily characterized as a quasi-municipal corporation which is created by school districts pursuant to legislatively granted authority.

This brings us to the remaining issue of whether the entities in question may generally be considered an "agency, authority, institution or instrumentality" of a municipality. The parties to the interlocal agreements in question are all school districts, and are specifically defined as municipalities under K.S.A. 1990 Supp. 75-6102. It is therefore necessary to examine the specific relationship between the school districts and the entity seeking to utilize the provisions of K.S.A. 1990 Supp. 12-2616 et seq. and K.S.A. 1990 Supp. 75-6102 in order to determine whether the entity created by an interlocal agreement is an "agency, authority, institution or other instrumentality" of the school districts. We must first define these terms.

In its legal sense, the term agency always imports commercial or contractual dealings between two parties. 3 Am.Jur.2d Agency §1 (1986). An agency is a consensual, fiduciary relation between two persons, created by law by which one, the principal, has the right to control the conduct of the agent, and the agent has a power to affect the legal relations of the principal. Restatement (Second) of Agency, § 1 comment (a) (1984). When used as a noun, authority has been defined as ". . . a duly constituted administrative agency, such as a port authority." Ballentines Law Dictionary 112 (3rd ed. 1969). An institution includes "something that has been established, particularly a place where an educational or charitable enterprise is conducted." Id. at 640. Instrumentality is "an agency, a means of accomplishment." Id. at 641.

We note that the terms "agency, authority, institution or other instrumentality" do not automatically encompass employees of a municipality, but rather, the Kansas tort claims act sets forth alternate protections for such employees. See K.S.A. 1990 Supp. 75-6102(d). Moreover, independent contractors would not necessarily qualify as an agency, authority, institution or instrumentality of a school district. See Bonewell v. Derby, 236 Kan. 589 (1985); Barber v. Williams, 244 Kan. 318 (1988); Wicina v. Strecker, 242 Kan. 278 (1987).

You submit for our review two interlocal agreements entered into by school districts utilizing the authority of K.S.A. 12-2901 et seq. and K.S.A. 1990 Supp. 72-8230. These agreements set forth the various powers and duties of separate legal entities known as "The High Plains Educational Cooperative" and "The Southwest Kansas Area Cooperative." Through these agreements, the school districts create cooperative service centers and authorize these separate legal entities to act on their behalf regarding provision of specified services. While the school districts have delegated certain duties and powers to the interlocally created cooperatives, the school districts remain responsible for those duties delegated by law to school districts. Should a cooperative fail or be negligent in the performance of such services, it is possible that a claimant might prevail against the school district as well as the cooperative. Moreover, the cooperative does not exist independently of the school districts: i.e. it is created by and for the use of the school districts; it continues to rely upon the districts not only for funds, but for authority to perform the services; and it is subject to the continuing control of the school districts pursuant to directives from board members from each school district.

Thus, utilization of K.S.A. 1990 Supp. 72-8230 by a school district creates an entity which, so long as it remains in the form it was created, appears to be in an agency/principal relationship with the school districts. By the terms of the submitted agreements, if all the school districts permissibly terminate the agreement, the cooperative ceases to exist and may no longer act on behalf of the school districts. Thus, any authority exercised by school district cooperatives created pursuant to these agreements comes by and from a contract between school districts, and may not be exercised without such delegation of authority.

Based upon our review of the agreements in question and the nature of the agency relationships thereby created between the cooperative service centers and the principal school districts, it is our opinion that the specific school district interlocal cooperative entities you call to our attention (the High Plains Educational Cooperative, the Southwest Kansas Area Cooperative and the Southwest Plains Regional Service Center) fall within the definition of municipality set forth at K.S.A. 1990 Supp. 75-6102 and thus, these entities may utilize the provisions of K.S.A. 1990 Supp. 12-2616 et seq.

However, we would caution that there may exist entities which act on behalf of school districts that do not qualify as an "agency, authority, institution or other instrumentality" of those districts. Such entities might take the form of private corporations contracting with school districts for various purposes, former cooperatives which have become or are virtually independent of the school districts or cooperative service centers or entities which are so dependent upon the school district that they fall within the definition of employee.

Because we do not have the facts before us concerning other educational cooperatives formed pursuant to K.S.A. 12-2901 et seq. and K.S.A. 1990 Supp. 72-8230 it is not possible to conclusively state whether such entities may be defined as a municipality under K.S.A. 75-6102, as amended. Each entity seeking to utilize the provisions of K.S.A. 1990 Supp. 12-2616 et seq. must be examined in light of the requirements set forth therein. However, many entities legally created pursuant to K.S.A. 12-2901 et seq. and K.S.A. 1990 Supp. 72-8230 will qualify as an "agency, authority, institution or other instrumentality" of a school district. We hope the principles discussed herein will provide some guidance in resolving each situation.

Very truly yours,

  
ROBERT T. STEPHAN  
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