



STATE OF KANSAS

*Office of the Attorney General*

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VERN MILLER  
Attorney General

September 13, 1974

Opinion No. 74- 320

Mr. Lawrence H. Litson  
Gove County Attorney  
Gove, Kansas 67736

Dear Mr. Litson:

You inquire whether a Kansas city is subject to liability for injuries suffered by persons using a city-owned and city-operated swimming pool, or whether the city as a governmental entity is immune from liability in such instances.

In *Warren v. City of Topeka*, 125 Kan. 524, 265 Pac. 78 (1928), plaintiffs sought to recover damages against the City of Topeka for the death of their daughter in a Topeka swimming pool. The court cited with approval its earlier decision in *Gilliland v. City of Topeka*, 124 Kan. 726, 262 Pac. 493 (1928), for the holding that

"the maintenance of such well-equipped swimming pools was within the exercise of the governmental power of a city, and there could therefore be no liability for damages against the city." 125 Kan. at 526.

Secondly, you inquire whether the City is subject to liability for personal injuries caused by a city employee. In *Parker v. City of Hutchinson*, 196 Kan. 148, 410 P.2d 347 (1966), the court stated thus:

"The rule is firmly established in this state that absent a statute expressly imposing liability, a municipality is ordinarily not liable for the negligence or misconduct of its officers or employees when acting in the performance of its governmental functions....The rule is premised on the doctrine that the state is not liable except as made so by statute, and that municipalities as agents of the sovereign, when acting in a governmental capacity, are arms of

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the state and are likewise not liable. However, certain exceptions to the rule, which involve creation and maintenance of nuisances by a city.... and defects in public streets .... have been recognized." [Citations omitted.] 196 Kan. at 150.

I would recommend for your consideration the very comprehensive and extended discussion of municipal liability in *Krantz v. City of Hutchinson*, 165 Kan. 449, 196 P. 2d 227 (1948), which considers at length the classification of various activities as governmental or proprietary. The city is, of course, liable for injuries resulting from the negligence of its employees in the conduct of proprietary activities.

I hope this citation of authority will be helpful to you.

Very truly yours,



VERN MILLER  
Attorney General

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