



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 14, 1975

Opinion No. 75-222

Mr. Robert Corbett, Attorney
State Department of Health & Environment
1st Floor, Bldg. 740
Forbes AFB
Topeka, Kansas 66620

Dear Mr. Corbett:

You inquire whether regional health planning agencies are immune from liability and suit under the provisions of K.S.A. 46-901.

K.S.A. 46-901 reads in pertinent part:

"(a) It is hereby declared and provided that the following shall be immune from liability and suit on an implied contract, or for negligence or any other tort, except as is otherwise specifically provided by statute:

- (1) the state of Kansas; and
- (2) boards, commissions, departments, agencies, bureaus and institutions of the state of Kansas; and
- (3) all committees, assemblies, groups, by whatever designation, authorized by constitution or statute to act on behalf of or for the state of Kansas...."

Chapter 65, Article 2a of the Kansas Statutes deals with regional health programs. K.S.A. 1974 Supp. 65-2a01 is definitional; applicable subsections read:

(d) "Planning agency" means a regional areawide comprehensive health planning group that is approved by the department of health and environment to conduct areawide comprehensive health planning in a planning region pursuant to P.L. 89-749. (Emphasis supplied.)

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(e) "Planning region" means the geographical area for which a planning agency is responsible, as approved by the coordinating council for health planning, of the department of health and environment. The planning regions shall conform as closely as practicable with the public health districts as may be established by the secretary of health and environment. (Emphasis supplied.)

K.S.A. 65-2a02 also treats planning agencies and states in pertinent part:

"In order to assure availability of objective and impartial review by planning agencies, the planning agency shall be a nonprofit or public organization that is controlled by a board of directors consisting of a majority representing the public and local governments as consumers of health services and the health professions...."

P.L. 89-749, the motivating force for the state legislation, was enacted in 1966. It amended the Public Health Service Act in an effort to promote comprehensive health planning and public health services. Section 314 of the act authorized grants to public or nonprofit organizations to cover up to 75 percent of the costs of projects for developing comprehensive regional, metropolitan area, or other local area plans for coordination of existing and planned health services. The planning agencies are restricted in their functions to limited geographic regions. Their purpose, as emphasized by subsequent federal legislation, is to promote health planning participation at the local and area level.

Moreover, the planning agencies are not state governmental entities, but rather nonprofit or public organizations; their members are not state officers or employees and are not appointed or paid by the state. The creation of these organizations is induced, ultimately, by federal law; the department of health and environment merely gives its approval to them. It is instructive to note that one of the planning agencies which has been approved by the department, Mid-America Comprehensive Health Planning Agency, Inc., is a Missouri corporation whose region encompasses not only certain portions of Johnson and Wyandotte Counties in Kansas, but western Jackson County in Missouri, as well.

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For all these reasons, we conclude that planning agencies are not immune from liability and suit under K.S.A. 46-901. I trust this opinion has been of assistance.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:TFW:sas