



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 5, 1976

ATTORNEY GENERAL OPINION NO. 76- 39

The Honorable Kenneth Francisco
State Representative
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: Public Health--Family Planning Centers--Liability

Synopsis: There exists no present basis upon which to conclude purely as a matter of law that the State of Kansas may or may not be liable for injuries suffered by any person, minor or adult, resulting from side effects of contraceptive pills furnished by a family planning center operating under K.S.A. 25-501, or as amended by House Bill 2676.

* * *

Dear Representative Francisco:

You request my opinion concerning a question in reference to House Bill 2676. Specifically, you ask "hypothetically, if a minor should obtain contraceptive pills from a Family Planning Center and suffer side effects such as illness or death, would the State be liable for such illness or death."

Presently, of course, the State of Kansas is "immune from liability and suit on an implied contract, or for negligence, or any other tort." K.S.A. 46-901. The constitutionality of this provision is presently before the Kansas Supreme Court. If there is held to be limited sovereign immunity, statutory or otherwise, it is impossible to predict the liability of the State in specific instances based upon hypothetical circumstances. The injuries for which damages are sought may not be attributable to any

The Honorable Kenneth Francisco
Page Two
February 5, 1976

negligent act or omission of the state or any of its departments or officers. If, under the decision of the Kansas Supreme Court, K.S.A. 46-901 does not bar the state from all liability, the possible liability of the state arising upon the hypothetical circumstances you pose would be unaltered were the claimant an adult.

In short, to respond specifically to your question, I have no present basis upon which to furnish an opinion purely as a matter of law predicting the possible liability of the State of Kansas for personal injuries under the circumstances described above.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj