



STATE OF KANSAS

**Office of the Attorney General**

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**Curt T. Schneider**  
Attorney General

March 16, 1977

ATTORNEY GENERAL OPINION NO. 77- 97

Mr. Robert F. Duncan  
City Attorney  
515 Kansas Avenue  
Atchison, Kansas 66002

Re: Cities--Insurance--Immunity

Synopsis: A city which purchases liability insurance under K.S.A. 74-4716 for its officers and employees, but not for the city itself, does not waive its governmental immunity for liability. If the city does purchase such insurance, and allows it to expire by cancellation, lapse of policy, or otherwise, the governmental immunity is restored by operation of law, for said immunity was waived only to the extent of the insurance which said city purchased, and only for the duration of said coverage.

\* \* \*

Dear Mr. Duncan:

K.S.A. 74-4716(a) provides thus:

"The procurement of insurance is hereby authorized for the purpose of insuring the state or any county or city, and their officers, employees and agents against any liability, in addition to liability covered by the Kansas workmen's compensation law, for injuries or damages resulting from any tortious conduct of such officers, employees and agents arising from the course of their employment."

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K.S.A. 74-4716 states in pertinent part thus:

"Upon procuring such insurance, the state, city or county thereby waives its governmental immunity from liability for injuries or damages resulting from tortious conduct of its officers, employees or agents during the course of their employment only to the extent of the insurance so obtained." [Emphasis supplied.]

You inquire whether the City of Atchison may procure insurance for its officers and employees under this provision, but not for the city itself, and not be deemed to have waived its governmental immunity, and whether the purchase of liability insurance for the officers and employees only would constitute a waiver of sovereign immunity by the city itself.

I find no case in which this question has been raised. At 57 Am.Jur.2d, Municipal, School and State Tort Liability, there is an exhaustive review of cases dealing with immunity, and a short discussion of the effect of the purchase of insurance. See §§ 53 et seq. However, in this instance, I believe that the question is controlled by the express statutory language of K.S.A. 74-4716, supra, i.e., that immunity is waived by the purchase of liability insurance "to the extent of the insurance so obtained." In my judgment, the phrase refers not only to the risks covered by the insurance and to value of the coverage afforded, but also to the parties covered by the insurance. The city might reasonably wish to obtain insurance to protect its officers and employees who might otherwise be unduly restrained in performing their duties for the city by fear they might be called upon to pay substantial judgments. I have found no authority to support the argument that the city waives its own immunity by obtaining insurance for its officers and employees, and in my judgment, the argument flies in the face of the quoted statutory language, which restricts the extent of any waiver of immunity to the extent of the insurance procured by the city. If the city does not purchase insurance insuring itself as a municipal corporation against tort liability, but only the liability of its officers and employees, the city has not expressly or impliedly waived its immunity from liability, in my judgment.

Secondly, you ask whether, once the city has procured liability insurance pursuant to the cited statutory authority, it has forever waived its governmental immunity, or whether, by cancellation or lapse of the policy, its immunity is automatically restored. Once again, I find no case in which this question has been raised

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or determined. However, I believe that this question is likewise governed by K.S.A. 74-4716, that any immunity which is waived by the purchase of insurance is waived only to the extent of the insurance so procured. Once that insurance lapses, for whatever reason, there is no longer any basis upon which the city's immunity may be deemed to have been waived, for it was lost only to the extent of the insurance which is procured and, necessarily, in my judgment, only for the duration of the policy which it procured.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj