



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 18, 1979

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79- 87

Mr. Philip H. Alexander
City Attorney
City of Hutchinson
P. O. Box 1567
Hutchinson, Kansas 67501

Re: Militia, Defense and Public Safety--Emergency
Preparedness for Disasters--Voluntary Establish-
ment of City Disaster Agencies

Synopsis: The governing body of a city may voluntarily
create a disaster relief agency to cooperate
and coordinate with state and county agencies;
however, in the event that a disaster should
occur, the authority of the county or inter-
jurisdictional agency would control the activities
of the voluntary city agency.

* * *

Dear Mr. Alexander:

You inquire whether the terms of K.S.A. 48-929 would prohibit
the establishment of a city emergency preparedness agency by
a city not otherwise required to establish such an agency by
K.S.A. 48-929(b). K.S.A. 48-929(b) provides:

"The governor shall determine which
cities need disaster agencies of their
own and, upon such determination, shall
require that each such city establish
and maintain a disaster agency therefor.
The governor shall make such determinations
on the basis of each city's disaster vul-
nerability and capability of response
related to population size and concentration.

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The disaster agency of a county shall cooperate with the disaster agency of any city located within such county, but shall not have jurisdiction within a city having its own disaster agency. The division of emergency preparedness shall publish and keep current a list of cities which are required to have disaster agencies under this subsection."

You advise that the City of Hutchinson is not one of the cities required to establish a city disaster agency, but that it nonetheless has voluntarily established such an agency. The question is whether the voluntary creation of a city disaster agency is contemplated under the Kansas Emergency Preparedness Act (K.S.A. 48-901 et seq.) and, specifically, K.S.A. 48-929(b).

One of the purposes of the Kansas Emergency Preparedness Act is to provide a comprehensive system of local governmental agencies throughout the state for dealing with the exigencies which accompany any disaster. In the event of an emergency, the Act provides for the coordination of such system, by incorporating county, city and inter-jurisdictional disaster agencies into a functional unit under the direction of the division of emergency preparedness in the Office of the Adjutant General.

A close review of the language of K.S.A. 48-929(b) reveals that the statute empowers the Governor to require certain cities in the state to establish and maintain a city disaster agency. The statute itself does not specifically authorize or preclude the creation of a voluntary city disaster agency; however, the real question, as we see it, is whether the county or voluntary city agency has jurisdiction in the event of a disaster in the city. In our view, the statute clearly contemplates that "for emergency preparedness and coordination of response to disasters" a county or inter-jurisdictional agency shall have jurisdiction, unless the Governor designates the city to have its own disaster emergency agency. K.S.A. 48-929(a). If a city is designated by the Governor to have its own disaster emergency agency, the jurisdiction of the county agency is limited and the city agency is responsible to act within the city's corporate limits. K.S.A. 48-929(b). However, absent such gubernatorial designation, the county or inter-jurisdictional agency continues to have responsibility to implement the disaster emergency plan and perform the functions under the statute. Thus, in the event of a disaster, a voluntarily-created disaster agency of the city would be required by law to submit to the jurisdictional authority of the county or inter-jurisdictional disaster agency.

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Therefore, we conclude that the City of Hutchinson may voluntarily create a disaster relief agency to cooperate and coordinate with the state and county agencies; however, in the event that a disaster should occur, the authority of the county or inter-jurisdictional agency would control the activities of the voluntary city agency.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:gk