



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 16, 1981

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

ATTORNEY GENERAL OPINION NO. 81- 280

Mr. Lynn Burris, Jr.
Director
The Kansas State Park and
Resources Authority
503 Kansas Avenue, P.O. Box 977
Topeka, Kansas 66601

Re: State Departments, Public Officers, Employees--
Kansas Tort Claims Act--Liability For Damages of
Governmental Entities For Employee Acts or Omissions;
Exceptions From Liability

Synopsis: Where the prevailing standard relating to electrical construction has required, since 1978, the installation of "ground fault interrupter protection devices" at 15 and 20 amp campsite electrical boxes, the Kansas State Park and Resources Authority would not, under the Kansas Tort Claims Act, be shielded from liability for gross and wanton negligence where it has constructed outlets (since 1978) and failed to install such protection devices. Additionally, the Authority would not be shielded from liability if it failed to inspect and replace inoperable protection devices at state park campsites, if such failure constituted gross and wanton negligence. Cited herein: K.S.A. 1980 Supp. 75-6101, 75-6104.

*

*

*

Dear Mr. Burris:

You request our opinion as to whether the Kansas State Park and Resources Authority "would be liable" if someone were electrocuted

at a state park campsite electrical box which was not equipped with an operable "ground fault interrupter protection device." You state that the Park and Resources Authority has installed the device at all electrical outlets constructed since 1974, in order to protect the public and park personnel. Also, you advise that the National Electrical Code, which is the prevailing and recognized standard relating to electrical construction, has required, since 1978, that such devices be present on all 15 and 20 amp outlets located outside a building. Additionally, you state that the devices have a very short service life and must be replaced frequently in order to maintain protection.

The Kansas Tort Claims Act, K.S.A. 1980 Supp. 75-6101 et seq., provides that governmental entities in the state of Kansas, including the state itself, shall be liable, subject to the limitations of the act, for damages caused by the negligent or wrongful act or omission of any of their employees while acting within the scope of their employment under circumstances where a private person would be liable under the laws of this state. There are certain exceptions to the liability imposed by the Tort Claims Act, with two of such exceptions being provided in K.S.A. 1980 Supp. 75-6104(1) and 75-6104(n), as follows:

"A governmental entity . . . shall not be liable for damages resulting from:

. . . .

"(1) [T]he plan or design for the construction of or an improvement to public property, either in its original construction or any improvement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the governmental entity or some other body or employee exercising discretionary authority to give such approval and if the plan or design was prepared in conformity with the generally recognized and prevailing standards in existence at the time such plan or design was prepared.

. . . .

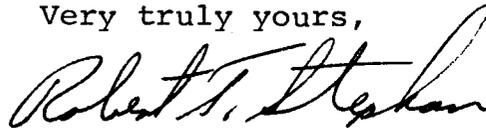
"(n) [A]ny claim for injuries resulting from the use of any public property intended or permitted to be used as a park, playground or open area for recreational purposes, unless the governmental entity or an employee thereof is guilty of gross and wanton negligence proximately causing such injury." (Emphasis added.)

Mr. Lynn Burris, Jr.
Page Three

In accordance with subsection (l) of the statute quoted above, the state would not be liable for any injuries occurring at electrical boxes, constructed prior to 1978, which were not equipped with the protection device, since the construction and design would have been in conformity with the generally recognized and prevailing standards in existence at the time the construction occurred. Where construction of the outlets on park property occurred after 1978, the state would be liable, in accordance with subsection (n) quoted above, for failure to install the devices only if such failure constituted gross and wanton negligence.

In regard to protection devices already installed, if, as you have stated, the devices must be replaced frequently, the question arises as to possible tort liability for failure to inspect and replace. Under general negligence law, a governmental entity which extends an invitation to the public to make use of its facilities for recreational purposes owes a duty of reasonable and ordinary care against known or foreseeable dangers, and there may, in some circumstances, be a duty to inspect the premises to discover dangers. 65 C.J.S. Negligence §§63(41), 63(55). However, under subsection (n) of K.S.A. 1980 Supp. 75-6104, quoted above, the state of Kansas would be liable for a failure to inspect and replace inoperable protection devices at state park campsites only where such failure constituted "gross and wanton negligence." A determination of whether conduct amounts to gross and wanton negligence may be made only by a trier of fact in relation to a specific factual context. However, it would be our observation that the protection devices should be maintained to the maximum extent possible, within fiscal constraints, for the dual purpose of avoiding possible tort liability and protecting the citizens of this state.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm