



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 53

Marvin E. Henry
Division of Emergency Preparedness
Office of the Adjutant General
2800 Topeka
Topeka, Kansas 66611

Re: Militia, Defense and Public Safety -- Emergency
Preparedness for Disasters -- Authority of Counties
to Enter Interjurisdictional Agreements

Synopsis: K.S.A. 48-930 authorizes counties to enter into
interjurisdictional disaster agreements only after
the governor has made certain findings and ordered
counties to so act. However, both K.S.A. 1982
Supp. 19-101a and K.S.A. 19-212 Eleventh, authorize
counties to enter into mutual aid agreements
for disaster emergencies without gubernatorial
directive, so long as such agreements are not
contrary to local disaster emergency plans as
approved by the division of emergency preparedness.
Cited herein: K.S.A. 12-2901, K.S.A. 19-101a,
19-212, K.S.A. 1982 Supp. 48-928, K.S.A. 48-930.

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Dear Mr. Henry:

You inquire of this office regarding the meaning of K.S.A.
48-930. Specifically, you ask if counties may enter into
mutual aid agreements without specific direction from the
governor. You suggest that K.S.A. 48-930(b) authorizes, even
commands, counties to enter into interjurisdictional disaster
agreements without the governor's directive.

Marvin E. Henry
Page Two

For the reasons discussed below we disagree that K.S.A. 48-930(b) authorizes or directs counties to enter into such agreements without a gubernatorial order. However, we call your attention to K.S.A. 19-212 Eleventh, and K.S.A. 1982 Supp. 19-101a, the county home rule statute, both of which, in our opinion, authorize counties to enter into agreements for interjurisdictional disaster emergency agreements.

K.S.A. 48-930(a) empowers the governor to order the establishment of an interjurisdictional disaster agency composed of two or more counties. The governor's order must be based upon those findings enumerated in the statute. Subsection (b) of 48-930 states in pertinent part:

"Two or more counties, which are not under the jurisdiction of an interjurisdictional disaster agency pursuant to subsection (a), may be required by the governor, by an order issued in the manner prescribed in subsection (a), to participate and enter into an interjurisdictional agreement or arrangement without requiring the establishment and maintenance of such a disaster agency"

(Emphasis added.)

As with subsection (a), the governor's order is contingent upon the making of the findings enumerated in the statute.

It seems clear to us that both subsections (a) and (b) grant power to the governor to make certain orders based upon specific findings. The former, to create an interjurisdictional disaster agency, and the latter, to order counties to enter into certain agreements without forming an interjurisdictional disaster agency. But neither subsection grants authority to counties to act in the absence of a gubernatorial order. This conclusion does not, however, end our analysis since nothing in this statute or other disaster emergency statutes prohibits counties from making interjurisdictional disaster agreements under other statutory grants of contracting authority.

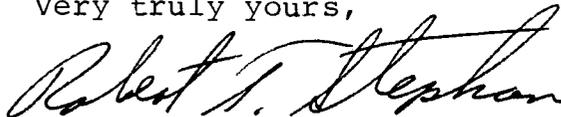
Marvin E. Henry
Page Three

K.S.A. 1982 Supp. 19-101a grants counties the authority "to transact all county business and perform such powers of local legislation and administration as they deem appropriate." Such powers are subject only to the constitution and the limitations enumerated in the statute. One such limitation makes county home rule powers subject to all acts of the legislature uniformly applicable to all counties. K.S.A. 1982 Supp. 19-101a First. Since we find no Kansas statute which expressly or implicitly restricts a county's general authority to enter into interjurisdictional disaster agreements (48-930 only declares when counties may be ordered to do so), we can only conclude that counties are generally free to act in this area. Moreover, K.S.A. 19-212 Eleventh, authorizes counties to "contract for the protection and promotion of the public health and welfare." See generally, Kan. Att'y Gen. Op. No. 79-87 concluding cities may voluntarily create disaster relief agencies without gubernatorial order.

Counties desiring to enter such mutual aid agreements independent of K.S.A. 48-930 should examine the applicability of the Interlocal Cooperation Act, K.S.A. 12-2901 et seq.

Therefore, it is our opinion that K.S.A. 48-930 authorizes counties to enter into interjurisdictional disaster agreements only after the governor has made certain findings and ordered counties to so act. However, both K.S.A. 1982 Supp. 19-101a and K.S.A. 19-212 Eleventh, authorize counties to enter into mutual aid agreements for disaster emergencies without gubernatorial directive, so long as such agreements are not contrary to local disaster emergency plans as approved by the division of emergency preparedness pursuant to K.S.A. 1982 Supp. 48-928 and K.S.A. 48-930.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle