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June 14, 1985

ATTORNEY GENERAL OPINION NO. 85- 65

Col. Mahlon G. Weed  
Deputy Director  
Division of Emergency Preparedness  
The Adjutant General's Office  
P.O. Box C-300  
Topeka, Kansas 66602

Re: Militia, Defense and Public Safety--Emergency  
Preparedness for Disasters--Authority to Accept  
Services, Gifts, Grants and Loans

Synopsis: Pursuant to regulations of the Federal Emergency  
Management Agency (FEMA), cities and counties  
participating in the Emergency Management Assistance  
program must be "serviced" by a merit system in  
employing emergency management personnel. However,  
such cities and counties need not follow the State  
of Kansas civil service salary plan in compensating  
emergency management personnel. Cited herein:  
K.S.A. 48-916(a); 5 C.F.R. §900.603, 44 C.F.R.  
§302.3.

\* \* \*

Dear Colonel Weed:

You indicate that certain cities and counties participating in  
the federal Emergency Management Assistance (EMA) program do not  
have their own merit systems for personnel administration, and  
request our opinion whether such cities and counties must  
accordingly compensate local emergency management personnel

pursuant to the State of Kansas civil service salary plan. You advise that these cities and counties follow the Kansas Civil Service Act in appointing emergency management personnel, but that they not wish to follow the state civil service salary plan in compensating them.

In responding to your question, we first note that where a unit of local government accepts federal funds for purposes of emergency preparedness, it is subject to the rules and regulations of the federal agency which makes the grant. K.S.A. 48-916(a). Federal Emergency Management Agency (FEMA) regulations require grantees to follow terms and conditions prescribed by the Federal Assistance Handbook CPG 1-3, and to establish methods of personnel administration in conformity with certain merit principles. See 44 C.F.R. §302.2(e) and 44 C.F.R. §302.4 (1984). Pertinent provisions of the handbook read as follows:

"Compensation for emergency management employees must be reasonable in light of services rendered and consistent with payment rates for similar work in other activities of the State or local government. [Chapter 2, Section 2.16a(2) (a).]

"All paid employees of State and local emergency management agencies, whether or not paid with the assistance of Federal funds, must be appointed through and serviced by a merit system established and maintained in compliance with OPM Standards for a Merit System of Personnel Administration. This requirement also applies to federally funded employees in other State or local agencies as defined in 2.16a(2) (b). (Emphasis added.)" [Chap. 2, Section 2.16a(4) (a).]

Office of Personnel Management (OPM) Standards for a Merit System of Personnel Administration provide as follows:

"The quality of public service can be improved by the development of systems of personnel administration consistent with such merit principles as--

"(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open

consideration of qualified applicants for initial appointment.

"(b) Providing equitable and adequate compensation.

"(c) Training employees, as needed, to assure high quality performance.

"(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

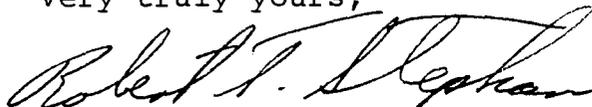
"(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This 'fair treatment' principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

"(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office." 5 C.F.R. §900.603. (Emphasis added.)

In our judgment, none of the above-quoted federal regulations require that local jurisdictions follow a state civil service salary plan in compensating emergency management personnel. While such jurisdictions must comply with merit principles (including advancement of employees on the basis of their relative ability) and be "serviced" by a merit system with respect to emergency management personnel, the federal regulations require only that compensation be adequate, equitable, and consistent with payment rates for similar work in local government. Therefore, although units of local government may choose to follow the state civil service salary plan in

compensating emergency management personnel, in our opinion  
the above-cited federal regulations do not require that they  
do so.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

TRH:jm