



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 86- 31

Steven P. Johnson
Chairman
Shawnee County Rural Water District No. 8
3260 SE Tecumseh Road
Tecumseh, Kansas 66542

Re: State Departments; Public Officers and Employees --
Kansas Tort Claims Act -- Definition of
"Municipality;" Rural Water Districts

Synopsis: A rural water district organized pursuant to K.S.A. 82a-612 et seq. as a quasi-municipal corporation is a political subdivision of the state and its activities are governmental in nature. Accordingly, a rural water district is a municipality for purposes of the Kansas Tort Claims Act and liability for claims against it arising within the scope of the act is limited to \$500,000 per occurrence. Cited herein: K.S.A. 75-6101; 75-6102; 75-6103; 75-6105; K.S.A. 82a-612; 82a-613; 82a-614; 82a-615; 82a-616; 82a-617; 82a-618; 82a-619; 82a-625.

* * *

Dear Mr. Johnson:

As chairman of Shawnee County Rural Water District No. 8, you ask our opinion whether a rural water district is classified as a municipality under the Kansas Tort Claims Act. You inform us that your district and other rural water districts are receiving notices of reduced limits from your insurance carriers.

The Kansas Tort Claims Act, K.S.A. 75-6101 et seq., imposes liability on governmental entities for damages caused by its employees" while acting within the scope of their employment under circumstances where the governmental entity, if a private person, would be liable under the laws of this state." K.S.A. 75-6103. "Governmental entity" is defined in K.S.A. 75-6102(c) as the state or a municipality. K.S.A. 75-6102(b) broadly defines "municipality" as follows:

"'Municipality' means any county, township, city, school district or other political or taxing subdivision of this state, or any agency, authority, institution or other instrumentality thereof." (Emphasis added.)

The question is, therefore, whether a rural water district organized pursuant to K.S.A. 82a-612 et seq., is a political or taxing subdivision of the state. If a rural water district comes under the Kansas Tort Claims Act, liability for claims within the scope of the act is limited to \$500,000 "for any number of claims arising out of a single occurrence or accident." K.S.A. 75-6105(a).

The board of county commissioners has the power and duty to incorporate and organize a rural water district when a petition signed by at least fifty percent of the owners of land within the proposed district is filed with the county clerk. K.S.A. 82a-613, K.S.A. 82a-614. A rural water district is governed by a board of directors elected by the landowners within the district. K.S.A. 82a-615; K.S.A. 82a-617; K.S.A. 82a-618.

K.S.A. 82a-619 provides that "no district organized under this act shall have any power or authority to levy any taxes whatsoever." A rural water district may finance up to 95% of the cost of its projects through loans. K.S.A. 82a-619. Revenue bonds issued for the construction of projects are self-liquidating out of the revenue the district receives for its services and facilities. K.S.A. 82a-625. Since a rural water district does not have the power to tax, it cannot be classified as a taxing subdivision for purposes of the Kansas Tort Claims Act.

Any "political subdivision" of the state is also considered a municipality for purposes of the Tort Claims Act. It is the duty of the board of county commissioners under K.S.A. 82a-616 to decide whether to establish a rural water district:

"If upon such consideration it shall be found that such petition is in conformity

with the requirements of this act, the board of county commissioners shall thereupon immediately declare either the district within the boundaries defined in the petition or a district contained within such boundaries as described by such board to constitute a quasi-municipal corporation and to be incorporated as a rural water district under the name of 'rural water district No. _____, _____ county, Kansas,' . . . and thereupon shall enter upon its records full minutes of such hearing, together with declaration that thenceforth said district shall constitute a body politic and corporate under said corporate name for the purposes of this act."
(Emphasis added.)

It has not been determined in Kansas whether a rural water district as a "quasi-municipal corporation" is a political subdivision of the state.

The term "political subdivision" is defined in Black's Law Dictionary 1043 (rev. 5th ed. 1979) as follows:

"A division of the state made by proper authorities thereof, acting within their constitutional powers, for purpose of carrying out a portion of those functions of state which by long usage and inherent necessities of government have always been regarded as public."

The Kansas Supreme Court in In re Tax Protests of Midland Industries, Inc., 237 Kan. 867, 870 (1985), ruled that a state or municipality will not be held liable for its performance of a governmental function but will be held to the same responsibility as a private person for damages caused by its actions when involved in a proprietary or private function. "Ordinarily a municipality is engaged in the performance of a governmental function when it exercises the sovereign power delegated to it to look after the general public good and after the peace, health and well being of the citizens of the state at large." [Citations omitted]. Id. Governmental and proprietary functions are distinguished as follows:

"Governmental functions are those which are performed for the general public with respect to the common welfare and for

which no compensation or particular benefit is received, while proprietary functions are exercised when an enterprise is commercial in character or is usually carried on by private individuals or is for the profit, benefit or advantage of the governmental unit conducting the activity." Griggs v. City of Goddard, 233 Kan. 915, 917 (1983) quoting State ex rel. Schneider v. McAfee, 2 Kan.App.2d 274, 276 rev. denied 225 Kan. 845 (1978).

A rural water district qualifies as a political subdivision and is a municipality under the Kansas Tort Claims Act if the functions it performs are by nature public or governmental.

Whether an entity is performing a governmental or proprietary function depends on the particular facts in each case. Smith v. Board of Education, 204 Kan. 580, 583 (1970). The Kansas courts have held a wide range of activities to be governmental in nature. See, e.g., In re Tax Protests of Midland Industries, Inc., 237 Kan. 867 (1985) (collecting taxes); Griggs v. City of Goddard, 233 Kan. 915 (1983) (maintaining a courthouse); Schmeck v. City of Shawnee, 232 Kan. 19 (1982) (maintaining streets); Cross v. City of Kansas City, 230 Kan. 545 (1982) (furnishing water for fire department); Grover v. City of Manhattan, 198 Kan. 307 (1967) (operating a zoo); Koehn v. Board of Education 193 Kan. 263 (1964) (operating schools); Wilburn v. Boeing Airplane Co., 188 Kan. 722 (1961) (regulating traffic); U.S.D. No. 490 v. Celotex Corp., 6 Kan.App.2d 346 (1981) (constructing a school building); Mt. Carmel Medical Center v. Board of County Commissioners, 1 Kan.App.2d 374 (1977) (maintaining a jail). Generally, activities which are determined to be proprietary are established for a commercial purpose and are not for the benefit of the public as a whole. See Wendler v. City of Great Bend, 181 Kan. 753, Syl. ¶5 (1957) (airport and public utilities, such electricity, gas, water and transportation system, held to be proprietary); Stolp v. City of Arkansas City, 180 Kan. 197 (1956) (operation of city hospital is proprietary).

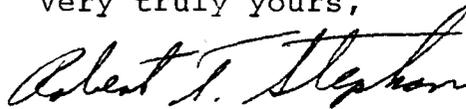
In Paul v. Topeka Township Sewage District, 199 Kan. 394 (1967), the court held that a township sewage district is a quasi-municipal corporation and is engaged in governmental functions when its officers perform the duties conferred on it by statute. Pursuant to K.S.A. 82a-614, the purpose of a rural water district must be stated in its petition for organization:

"The petition shall (1) define by metes and bounds the boundaries of the proposed district and shall state (2) that the lands within such boundaries are without an adequate water supply; (3) that the construction and maintenance of ponds or reservoirs or pipelines or wells or check dams or pumping installation, or any other facility for water storage, transportation or utilization, or that the construction and maintenance of any combination of said projects is necessary for the improvement of the community, and (4) that such improvement or works shall be conducive to and will promote the public health, convenience and welfare."

Like a sewage district, a rural water district as a quasi-municipal corporation performs governmental functions by exercising the powers delegated to it to promote the health and well-being of the public. While a rural water district may charge fees for the use of its services, its purpose is not commercial but to generate revenue to pay for its facilities.

In summary, we conclude that a rural water district organized pursuant to K.S.A. 82a-612 et seq. as a quasi-municipal corporation is a political subdivision of the state and its activities are governmental in nature. Accordingly, a rural water district is a municipality for purposes of the Kansas Tort Claims Act. Liability for claims against it arising within the scope of the act is limited to \$500,000 per occurrence, pursuant to K.S.A. 75-6105.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General