



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 177

Mr. Joe L. Norton
Gaar & Bell
Suite 800, One Main Place
Wichita, Kansas 67202

Re: Cities and Municipalities--Public Utilities;
Municipal Energy Agencies--Liability for Tortious
Acts

State Departments, Public Officers and Employees--
Kansas Tort Claims Act--Definitions

Synopsis: Members and employees of a municipal energy agency created under the provisions of K.S.A. 12-885 et seq. are covered by the provisions of the Kansas Tort Claims Act, including complete immunity for the functions set out at K.S.A. 75-6104, and are entitled to a legal defense in the event they are sued for acts or omissions in the scope of their employment. Cited herein: K.S.A. 12-885; 12-888; 12-895; 12-8,105; 75-6101; 75-6102; 75-6104; 75-6105; 75-6105; 75-6109.

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Dear Mr. Norton:

As general counsel to the Kansas Municipal Energy Agency, you have requested the opinion of this office on a question concerning the potential liability of employees and directors of the aforesaid agency. Created pursuant to the provisions of K.S.A. 12-885 et seq., a municipal energy agency is authorized to purchase, sell, exchange or transmit electric

energy within and outside the state of Kansas and is a quasi-municipal corporation. K.S.A. 12-885; K.S.A. 12-895. The participating cities creating a municipal energy agency are not liable for the obligations of the agency [K.S.A. 12-888(a)(7)], and K.S.A. 12-885 prescribes, in part, that:

"Nothing herein shall be construed as relieving any municipal energy agency created under the provisions of this act from liability for tortious acts."

K.S.A. 12-895(a)(14) authorizes the purchase of insurance against any losses in connection with the property, operations or assets of a municipal energy agency, and K.S.A. 12-8,105 empowers such an agency to indemnify and to purchase and maintain insurance on behalf of any director, officer, employee or agent of the energy agency.

The Kansas Tort Claims Act, K.S.A. 75-6101 et seq., was enacted in 1979, two years subsequent to the enactment of K.S.A. 12-885 et seq. It makes a "governmental entity" liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment. The term governmental entity includes cities or other political subdivisions of the state, and agencies and instrumentalities thereof. K.S.A. 75-6102. The maximum liability for any number of claims arising out of a single accident is \$500,000 (K.S.A. 75-6105), and K.S.A. 75-6104 prescribes a list of seventeen different functions or activities for which governmental immunity exists.

K.S.A. 12-885 et seq. and the Kansas Tort Claims Act, K.S.A. 75-6101, each contain provisions relating to the liability of municipal energy agencies for tortious acts. Accordingly, although they were enacted at different times, they are in pari materia and should be construed together. Claflin v. Walsh, 212 Kan. 1, 9 (1973). In this regard, although the 1977 act provides that "nothing herein" shall be construed as relieving any municipal energy agency from liability for tortious acts (K.S.A. 12-885), it is our opinion that the Kansas Tort Claims Act, including the exceptions from liability prescribed by K.S.A. 75-6104 and the maximum monetary liability prescribed by K.S.A. 75-6105, applies to a municipal energy agency to the same extent as any other governmental entity in the state of Kansas.

Additionally, it is our opinion that employees and directors of a municipal energy agency are covered by other provisions

of the Kansas Tort Claims Act, including complete immunity for the functions set out at K.S.A. 75-6104, and are entitled to a legal defense in the event they are sued for acts or omissions in the scope of their employment (K.S.A. 75-6108). In the further event that a judgment is rendered against them for such acts or omissions, they may look to the municipal energy agency for indemnification. K.S.A. 75-6109.

Very truly yours,


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