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ATTORNEY GENERAL OPINION NO. 87- 174

Mr. Dennis W. Moore
Johnson County District Attorney
Johnson County Courthouse
P.O. Box 728 - 6th Floor Tower
Olathe, Kansas 66061

Mr. George R. Laughead, Chairman
Board of Commissioners
Housing Authority
407 E. Bend Avenue
Dodge City, Kansas 67801

Re: Procedure, Civil -- Immunity From Liability For
Volunteers of Certain Nonprofit Organizations --
Limitations; General Liability Insurance
Requirements

Synopsis: The intent of L. 1987, ch. 215 is to encourage individuals to serve as volunteers for certain nonprofit organizations by granting to the volunteer immunity from liability for negligent acts or omissions. There are limitations to this immunity. For the act to apply, the organization must carry general liability insurance which will pay on behalf of the insured when an individual suffers loss for which the insured is liable. The exact amount and type of insurance required is to be determined in light of the exposure to liability which arises out of the organization's activities. Cited herein: L. 1987, ch. 215, sec. 1 (to be codified at K.S.A. 1987 Supp. 60-3601).

Dear Mr. Moore and Mr. Laughead:

As District Attorney for the Tenth Judicial District and as Chairman of the Board of Commissioners, Dodge City Housing Authority, respectively, you have each requested our opinion regarding 1987 Senate Bill No. 28, L. 1987, ch. 215 (to be codified at K.S.A. 1987 Supp. 60-3601). Your requests have been consolidated to avoid duplicity. Specifically, you inquire as to what insurance coverage can be cancelled by nonprofit organizations in light of Senate Bill No. 28.

Protection from liability by Senate Bill No. 28 is afforded to volunteers of those organizations which meet two criteria. First, the organization must be a nonprofit organization. A nonprofit organization is defined by L. 1987, ch. 215, sec. 1(a)(1) as an organization "exempt from federal income tax pursuant to section 501(c) of the Internal Revenue Code of 1986. . . ." The second threshold test is that the organization must carry general liability insurance.

The term "general liability insurance" is not defined by the act. The courts have had occasion to construe general liability insurance policies, however, their analysis has been limited to whether indemnity is required by individuals' specific insurance policies. We do not find a description of what a general liability insurance policy is, or how it is distinguished from policies which are not "general".

Given the purpose of Senate Bill No. 28, the legislature's silence as to what constitutes general liability insurance is no surprise. The act was not a means to restructure the insurance coverage for nonprofit organizations. Rather, the purpose of the act was to assist those organizations on attracting qualified persons to serve as volunteers in various capacities. The Special Committee on Tort Reform and Liability Insurance noted that nonprofit organizations were having difficulty finding and retaining persons to serve as volunteer directors because of the fear of liability. Report on Kansas Legislative Interim Studies to the 1987 Legislature 565, 583 (December 1986). By establishing immunity for volunteers' negligent acts when liability insurance exists, the committee believed that individuals would be encouraged to act as volunteers, and yet the rights of injured plaintiffs would be preserved. Committee Report, at 593.

Bearing in mind the legislative intent of the act, we believe that the term "general liability insurance" cannot be given a precise definition which can be used in all situations. Some general guidelines are available, however. The Kansas Commissioner of Insurance has discussed the act in Kansas

Nonprofit Organizations - What Should You Know About Senate Bill No. 28, pp. 4-7 (June 1987). The commissioner notes that the term "general liability insurance" includes coverage for premises and operations liability, products and completed operations liability, contract liability, personal injury liability, and special events liability. Not included in these types of coverages are insurance for losses in civil rights claims, employment disputes, professional malpractice suits, automobile and aircraft liability, fiduciary liability, and workers' compensation claims. We believe that the exact type and amount of insurance required should be determined in light of the exposure to liability related to the organization's functions.

Upon meeting the two threshold requirements, Senate Bill No. 28 provides for immunity from liability in two ways. First, the volunteer is not liable for damages resulting from his own acts or omissions. Section 1(b) of Chapter 215 provides that this immunity does not apply if the volunteer's misconduct was willful or wanton or intentionally tortious. If the volunteer is insured against those types of acts, the individual is liable only to the extent of coverage. In addition, if the individual is required to be insured by law, then the immunity does not apply, but the individual is liable only to the extent of the insurance coverage. The second type of immunity involves the volunteer's liability for acts or omissions of others. Section 1(c) of Chapter 215 provides immunity for the volunteer for acts or omissions of others unless the volunteer authorizes, approves, ratifies or participates in willful or wanton conduct or intentionally tortious conduct. In addition, the immunity is not given if the volunteer is required by law to be insured against such acts.

The grant of immunity does not extend to the organization itself. The organization remains liable for damages, and the percent of fault attributable to the volunteer is imputed to the organization. Committee Report, at 593.

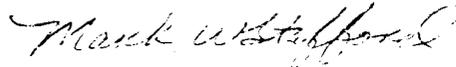
In conclusion, it is our opinion that the legislative intent of L. 1987, ch. 215 is to encourage individuals to serve as volunteers for certain nonprofit organizations by granting to the volunteer immunity from liability for negligent acts or omissions. There are limitations to this immunity. For the act to apply, the organization must carry general liability insurance which will pay on behalf of the named insured when an individual suffers loss for which the insured is liable as a result of their action which caused the loss. The exact amount and type of insurance required is to be determined in

light of the exposure to liability which arises out of the organization's activities.

Very truly yours,



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Mark W. Stafford
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