



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 1, 1989

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

ATTORNEY GENERAL OPINION NO. 89- 56

Col. Mahlon G. Weed
Office of the Adjutant General
Division of Emergency Preparedness
P.O. Box C-300
Topeka, Kansas 66601-0300

Re: Public Health -- Emergency Planning and Community
Right-To-Know -- State Emergency Response
Commission; Local Planning Districts

Synopsis: Kansas Turnpike Authority property located within a
planning district is part of the planning
district. The responsibility for managing
emergency incidents on such property is to be
determined by the emergency plan formulated by the
local emergency planning committee. The county, as
a county, has no inherent authority over the Kansas
Turnpike Authority. Cited herein: K.S.A. 1988
Supp. 65-5701 et seq., 65-5703; K.S.A. 68-2004,
68-2019; 42 U.S.C.A. §§ 11001, 11003.

* * *

Dear Col. Weed:

As director of the division of emergency preparedness, you
have requested our opinion regarding the relationship between
the Kansas Turnpike Authority (KTA) and Local Emergency
Planning Committees (LEPC). Specifically, you ask whether
KTA property within a local planning district falls within the
planning responsibilities of the LEPC's, and also what

obligations for managing emergency incidents occurring on KTA property are vested with the county.

The federal emergency planning and community right-to-know act, 42 U.S.C.A. § 11001 et seq., requires each state to appoint a state emergency response commission (SERC). Each SERC is to designate emergency planning districts to prepare and implement emergency plans. 42 U.S.C.A. § 11001(a)(b). For each planning district, a LEPC is appointed. The LEPC is to prepare an emergency response plan. The emergency plan must include: identification of facilities which are required to report the presence of hazardous substances; identification of routes likely to be used for transporting extremely hazardous substances; identification of facilities creating risk or subjected to risk by their proximity to other facilities; response procedures in the event of chemical releases; designation of emergency coordinators who are authorized to make determinations necessary to implement the plan; release notification plans; methods for determining the occurrence and likely effect of a release; facility descriptions; evacuation plans; training programs; and schedules for exercising the plan. 42 U.S.C.A. § 11003(c).

The federal act is implemented by the Kansas emergency planning and community right-to-know act, K.S.A. 1988 Supp. 65-5701 et seq. The SERC is established by K.S.A. 1988 Supp. 65-5703(a). Subsection (f) of the statute requires the SERC to establish local planning districts and LEPC's, as required by the federal act. Pursuant to those statutes, the SERC has established each county as a planning district.

We find no authority for exempting KTA property from a planning district. KTA property located within a planning district must be considered part of the planning district. As such, the responsibility for creating an emergency plan involving KTA property is properly vested with the LEPC for the district in which the property is located. The LEPC authority does not violate K.S.A. 68-2019 by impermissibly subordinating the KTA to a municipality, political subdivision, or another state agency. Emergency planning under 42 U.S.C.A. § 11003 is not a matter delegated to the KTA under K.S.A. 68-2004 (general grant of powers). Therefore, the powers granted to the authority are not subject to the approval of the LEPC.

Your second question involves the county's responsibilities for managing emergency incidents occurring on KTA property. The LEPC is not a county government entity. While the

planning districts correspond with county lines, the LEPC functions as a planning unit separate and distinct from the county, as a county. It is the responsibility of the LEPC, not the county, to formulate an emergency plan. The relationships between the KTA and various county fire departments are to be formulated in the emergency plan, giving regard to the autonomy of the KTA, the expertise of local fire departments, and the needs of the communities sought to be protected by the federal and state laws.

In conclusion, it is our opinion that KTA property located within a planning district is part of the planning district. The responsibility for managing emergency incidents on KTA property is to be determined by the emergency plan formulated by the LEPC. The county, as a county, has no inherent authority over the KTA.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mark W. Stafford
Assistant Attorney General

RTS:JLM:MWS:bas