



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 104

William F. Bradley, Jr.
Attorney at Law
2000 Epic Center
301 N. Main St.
Wichita, Kansas 67202-4820

Re: State Boards, Commissions and Authorities --
Information Network of Kansas -- Creation;
Governing Board; Applicability of Kansas Tort
Claims Act

State Departments; Public Officers and Employees --
Kansas Tort Claims Act -- Definitions; Liability of
Governmental Entities; Applicability of Act to
Information Network of Kansas

Synopsis: The provisions, both protections and limitations,
of the Kansas tort claims act apply to the board of
directors of the information network of Kansas
established pursuant to K.S.A. 1991 Supp. 74-9301
et seq. Cited herein: K.S.A. 1991 Supp.
74-9301; 74-9302; 74-9304; 74-9308; K.S.A. 75-6101;
K.S.A. 1991 Supp. 75-6102; K.S.A. 75-6103; K.S.A.
1991 Supp. 75-6104.

* * *

Dear Mr. Bradley:

As chairman of the board of directors of the information
network of Kansas (INK) you request our opinion on the
applicability of the Kansas tort claims act (KTCA), set

forth at K.S.A. 75-6101 et seq., to the members of the board.

The KTCA provides at K.S.A.75-6103(a):

"Subject to the limitations of this act, each governmental entity shall be 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 under circumstances where the governmental entity, if a private person, would be liable under the laws of this state."

For purposes of the KTCA "governmental entity" is defined as "state or municipality." K.S.A. 1991 Supp. 75-6102(c). "State" is defined by subsection (a) of the same statute as "the state of Kansas and any branch of state government, or any agency, authority, institution or other instrumentality thereof." Therefore, the first issue is whether INK falls within the definition of governmental entity.

INK was created in 1990, pursuant to K.S.A. 1991 Supp. 74-9301 et seq. K.S.A. 1991 Supp. 74-9303 provides:

"There is hereby created a body politic and corporate to be known as the information network of Kansas, Inc. INK is hereby constituted as a public instrumentality and the exercise by INK of the authority and powers conferred by this act shall be deemed and held to be the performance of an essential governmental function."

The purpose and duties of INK are further set forth at K.S.A. 1991 Supp. 74-9302 and, generally stated, relate to electronic access to public information. K.S.A. 1991 Supp. 74-9303 establishes a governing body and membership on that body. K.S.A. 1991 Supp. 74-9304 discusses the duties and responsibility of INK and its board of directors and requires that state agencies ". . . cooperate with INK in providing such assistance as may be requested for the achievement of its purpose." K.S.A. 1991 Supp. 74-9308 permits moneys received by INK to be deposited in the state treasury and credited to INK or maintained in an interest bearing account in Kansas. K.S.A. 1991 Supp. 74-9307 provides that employees of INK shall

be considered state employees under the deferred compensation plan, the Kansas public employees retirement system, the employment security law, the workers' compensation act, and other benefit programs applicable to state employees.

It appears from the provisions of K.S.A. 1991 Supp. 74-9301 et seq. that the act establishing INK creates a governmental entity as defined by K.S.A. 1991 Supp. 75-6102. Thus, it is our opinion that the provisions of the KTCA apply to INK. The remaining issue is whether the board of directors fit the definition of "employees," as that term is used in the KTCA.

K.S.A. 1991 Supp. 75-6102(d) defines an "employee" covered by the KTCA to mean:

"Any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation . . . but does not otherwise include any independent contractor under contract with a governmental entity. . . . Employee also includes former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity."
(Emphasis added).

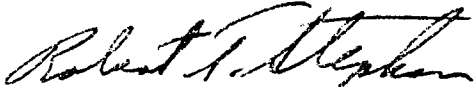
See also, Attorney General Opinions No. 88-62, 88-48, 87-97, 87-13, 86-177, 86-155, 86-109, and 86-45. Collins v. Heavener Properties, Inc., 245 Kan. 623 (1989) discusses applicability of the act to a board of county commissioners.

The board of directors of INK is statutorily required and empowered to act on behalf of an entity which we have opined is a governmental entity. Thus, in so acting, each serves the governmental entity known as INK. In examining the provisions of K.S.A. 1991 Supp. 74-9301 et seq., the KTCA and the above cited authority, it appears to this office that each member of the board of directors for INK meets the KTCA definition of "employee." Thus, it is our opinion that the terms, protections and limitations contained in the Kansas tort claims act, set forth at K.S.A. 75-6101 et seq.,

apply to the board of directors of the information network of Kansas, established pursuant to K.S.A. 1991 Supp. 74-9301 et seq.

We note that the applicability of the KTCA does not encompass certain acts by governmental officials (e.g. acts outside the scope of authority, malicious acts, etc.) and does not negate potential liability of the governmental entity for negligent acts not exempted pursuant to K.S.A. 75-6104. However, it is our opinion that the members of the board of directors of INK enjoy some protection under the KTCA as generally set forth by K.S.A. 75-6101 et seq.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



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