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March 5, 2013

ATTORNEY GENERAL OPINION NO. 2013- 07

Chris Howell, Executive Director
Kansas Native American Affairs Office
900 SW Jackson St., Suite 101A
Topeka, KS 66612-1246

Re: Militia, Defense and Public Safety–Emergency Preparedness for Disasters–
Kansas Mutual Aid System; Participation by Political Subdivisions

Synopsis: An Indian tribe is not a political subdivision for the purposes of the Kansas
Intrastate Mutual Aid Act. Cited herein: K.S.A. 12-16,117; K.S.A. 2012
Supp. 48-948; 48-950.

* * *

Dear Mr. Howell:

As Executive Director for the Kansas Native American Affairs Office, you ask whether an Indian tribe is considered a political subdivision for the purposes of the Kansas Intrastate Emergency Mutual Aid Act (Act).¹ Your question specifically pertains to K.S.A. 2012 Supp. 48-950, which states in relevant part:

All political subdivisions within the state, upon enactment of this act, are automatically a part of the Kansas mutual aid system. A political subdivision may elect not to participate or to later withdraw from the system by adoption of an appropriate resolution by its governing body declaring that it elects not to participate in the statewide mutual aid system. . . .

¹ K.S.A. 2012 Supp. 48-948 *et seq.* The purpose of the Act is to “create a system of intrastate mutual aid between participating Kansas political subdivisions” that shall provide for mutual assistance in the event of a disaster. K.S.A. 2012 Supp. 48-948(b).

The fundamental rule of statutory construction and interpretation is that the intent of the legislature governs if that intent can be ascertained.² “The legislature is presumed to have expressed its intent through the language of the statutory scheme it enacted.”³ The first step in interpreting a statute is to read the statutory language, giving common words their ordinary meanings.⁴

The Act does not define “political subdivision,” so we look to the ordinary meaning of the term to interpret the Act. “Political subdivision” is ordinarily defined as “[a] division of a state that exists primarily to discharge some function of local government.”⁵

This definition is consistent with Attorney General Opinion No. 82-71, wherein Attorney General Robert Stephan observed that “political subdivision” is generally used “as a reference to a *subordinate* governmental entity which exists for the purpose of discharging some function of local government within a prescribed territory and which has a governing body possessed of prescribed powers of self-government.”⁶ Key to this general definition is that the powers of self-government are *prescribed*, e.g., conferred by the Kansas Legislature. The self-government authority of a resident tribe does not derive from the Kansas Legislature, but instead is “ultimately dependent on and subject to the broad power of Congress.”⁷ Furthermore, a resident tribe is not a subordinate governmental entity of the state. Thus, a resident tribe does not meet the ordinary definition of a Kansas political subdivision.

The above analysis is consistent with legislative history, which indicates that the Act was proposed as a means to build upon the existing mutual aid system as described in K.S.A. 12-16,117. K.S.A. 12-16,117 authorizes the governing body of a municipality to establish by ordinance or resolution “a policy regarding the provision of assistance to other municipalities and public safety agencies located in other municipalities. . . .” The statute defines municipality as “any city, county or township.”⁸

A proponent of the Act testified that “[o]ur current mutual aid statute, K.S.A. 12-16,117, requires municipalities to pass resolutions and ‘opt-in’ in order to take advantage of the system.”⁹ The Adjutant General’s Department testified that “[The Act] covers all upon enactment unless an *agency or municipality* would pass a resolution that takes them out from under this umbrella agreement.”¹⁰ In other words, the Act would automatically include all political subdivisions in the intrastate mutual aid system. Political subdivisions

² See, e.g., *Higgins v. Abilene Machine, Inc.*, 288 Kan. 359 (2009); *Winnebago Tribe of Nebraska v. Kline*, 283 Kan. 64 (2007).

³ See, e.g., *In re Marriage of Killman*, 264 Kan. 33, 42 (1998).

⁴ See, e.g., *Padron v. Lopez*, 289 Kan. 1089, 1097 (2009).

⁵ Black’s Law Dictionary (9th ed. 2009).

⁶ See also Attorney General Opinion Nos. 98-39 (a regional library is a political subdivision for the purposes of K.S.A. 12-16,102); 97-42 (the Kansas Rural Water Finance Authority is not a political subdivision); and 95-67 (the Kansas Association of Counties is not a political subdivision).

⁷ *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980).

⁸ K.S.A. 12-16,117(a)(1).

⁹ *Minutes*, House Federal and State Affairs Committee, March 16, 2006, Attachment 6.

¹⁰ *Id.* at Attachment 2 (emphasis added).

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that choose to opt out of the system could still enter into mutual aid agreements pursuant to K.S.A. 12-16,117.

Based upon the above, we conclude that the Act is intended to supplement the existing “opt-in” mutual aid system authorized by K.S.A. 12-16,117, which allows a municipality to establish a mutual aid policy. The testimony from the Adjutant General’s Department quoted above supports this interpretation by characterizing an entity participating in the mutual aid system as “an agency or municipality.” We find no legislative history to suggest that the legislature intended “political subdivision” to have a meaning in K.S.A. 2012 Supp. 48-948 *et seq.* other than its ordinary definition.

For these reasons, we opine that a resident Indian tribe is not a political subdivision for the purposes of the Kansas Intrastate Mutual Aid Act, and therefore is not automatically included in the statewide mutual aid system. However, nothing in the Act would prohibit a resident tribe from entering into agreements with political subdivisions such as cities, counties and townships for the provision of mutual aid in the event of a disaster.

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Assistant Attorney General

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