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November 18, 2014

ATTORNEY GENERAL OPINION NO. 2014- 17

Shari Feist Albrecht, Chairperson
Jay Emler, Commissioner
Pat Apple, Commissioner
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

Re: Public Utilities—Utility Damage Prevention—Notification Center; Duties and Operation; Fees; Annual Report; Audits—Public Agency

Synopsis: The notification center created by the Kansas Underground Utility Damage Prevention Act is a public agency. Cited herein: K.S.A. 66-1801; K.S.A. 2014 Supp. 66-1802; K.S.A. 66-1803; K.S.A. 2014 Supp. 66-1804; 66-1805; and 66-1806.

* * *

Dear Chairperson Feist Albrecht and Commissioners Emler and Apple:

As members of the Kansas Corporation Commission, you ask for our opinion on whether the notification center created by the Kansas Underground Utility Damage Prevention Act (KUUDPA) is a public agency.

The Legislature created KUUDPA in 1993 to protect the State's underground utility infrastructure from excavation damage and to protect the public from harm by requiring compliance with specific and uniform notification requirements.¹ Specifically, the act created a mandatory damage protection program that requires excavators² to give

¹ K.S.A. 66-1801 *et seq.* The Kansas Legislature enacted KUUDPA to qualify for full grant eligibility in the pipeline safety arena under federal regulations. See 58 FR 10985-02, 10987, 1993 WL 44860; see also 49 C.F.R. § 198.35.

² See K.S.A. 2014 Supp. 66-1802(d), K.S.A. 66-1803 and K.S.A. 2014 Supp. 66-1804.

notice of intent to excavate to a centralized statewide communication system known as the notification center.³ The notification center disseminates that information to the applicable utility operators⁴ who are required to mark the location of underground utilities within a specified time in order to prevent damage to those utilities during excavation.⁵

KUUDPA recognizes the establishment of a single notification center for the State of Kansas, and requires each operator of an underground facility to become a member of the notification center.⁶

In 2008, the Legislature enacted House Bill 2637⁷ to amend KUUDPA, and the Governor signed the bill into law on April 24, 2008.⁸ This amendment, among other things, imposed several public accountability requirements on the State's notification center. The pertinent amendment provides:

The notification center established pursuant to this section *shall be and is hereby deemed to be a public agency* and shall be subject to the provisions of the open records act, K.S.A. 45-215 *et seq.*, and amendments thereto, and the open meetings act, K.S.A. 75-4317 *et seq.*, and amendments thereto, except that the notification center or *board of directors*, or successor managing organization shall not disseminate, make available or otherwise distribute data or information provided by an operator of a tier 1, 2 or 3 facility unless such dissemination, making available or distributing is necessary for the state corporation commission or the notification center to carry out legal duties or specific statutory duties prescribed under this chapter.⁹

Statutory interpretation begins with the language selected by the legislature. If that language is clear and unambiguous, a court will not speculate regarding legislative intent nor read into the statute something that is not readily found in it.¹⁰

It is clear from the language quoted above that the Legislature intended for the notification center to be a public agency. It provided that the notification center *shall be* a public agency, and in case there was some question as to their intent, the Legislature further provided that it also *is deemed* a public agency. While the provision explicitly delineates that the notification center shall be subject to the Kansas Open Records Act

³ K.S.A. 2014 Supp. 66-1802(i) defines the term “notification center” to be a statewide communication system operated by an organization which has as one of its purposes to receive and record notification of planned excavation in the state from excavators and to disseminate such notification of planned excavation to operators who are members and participants.

⁴ See K.S.A. 66-1805.

⁵ K.S.A. 2014 Supp. 66-1806(a).

⁶ K.S.A. 2014 Supp. 66-1805(a).

⁷ L. 2008, Ch. 122.

⁸ House Journal 2376 (2009 Session).

⁹ K.S.A. 2014 Supp. 66-1805(l). Emphasis added.

¹⁰ *Hays v. Ruther*, 298 Kan. 402, 404–05 (2013).

and the Kansas Open Meetings Act, it does not state that the notification center is a public agency only for those purposes.

Given the plain language of K.S.A. 2014 Supp. 66-1805(I), we conclude that a court would likely find that the notification center is a public agency.

Sincerely,

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