

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT.

The meeting was called to order by Chairperson Barbara P. Allen at 3:30 p.m. on February 12, 1996 in Room 423-S of the Capitol.

All members were present except: Rep. Benlon - excused
Rep. Packer - excused
Rep. Pottorff - excused
Rep. Flaharty - excused
Rep. King - excused

Committee staff present: Lynne Holt, Legislative Research Department
Bob Nugent, Revisor of Statutes
Nancy Kirkwood, Committee Secretary

Conferees appearing before the committee: Bill Caton, President, Kansas Development Finance Authority

Others attending: See attached list

Hearing on: **HB2686** - tort claims immunity for KDFA

Bill Caton addressed the committee as a proponent of the bill (Attachment 1).

Chairperson Allen concluded the hearing on **HB2686**.

Rep. Toplikar asked the committee to introduce a bill regarding Water Dist. #1 of Johnson County to relinquish the service area of Olathe to the City of Olathe. A motion was made by Rep. Lane to introduce the bill and Rep. Glasscock seconded. The motion passed.

The meeting adjourned at 3:45 p.m.

The next meeting is scheduled for February 13, 1996.

HOUSE ECONOMIC DEVELOPMENT COMMITTEE
GUEST LIST

DATE: Monday, February 12, 1996

NAME	REPRESENTING
<i>Bill Caton</i>	<i>KDPA</i>
<i>Mark Barcellona</i>	<i>KDOCH</i>
<i>Mike Miller</i>	<i>KS, Inc</i>
<i>Roger Franke</i>	<i>F&C</i>



KANSAS

KANSAS DEVELOPMENT FINANCE AUTHORITY

Bill Graves
Governor

Wm. F. Caton
President

TESTIMONY
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT
HOUSE BILL No. 2686
by BILL CATON
FEBRUARY 12, 1996

Thank you for the opportunity to testify before you today. I intend to be very brief as this bill is very straight forward. It simply ratifies in statute that the Kansas Development Finance Authority ("K DFA") and any subsidiaries are provided coverage under the Kansas Tort Claims Act.

This request for statutory clarification arose out of K DFA board investigation of liability issues regarding K DFA and any subsidiaries, specifically the Kansas Equity Fund which was authorized by the 1994 Legislature to enhance the delivery of federal Low Income Housing Tax Credits issued by the U.S. Treasury and allocated by the Kansas Department of Commerce and Housing. K DFA's board, in efforts to obtain Public Officials Liability insurance, requested Attorney General Robert Stephan to review liability issues. His negative opinion came as quite a surprise and caused considerable concern by K DFA board members, who serve without compensation of any kind.

K DFA then retained independent counsel to address the serious concerns regarding liability of K DFA board members, officers and staff. Independent counsel disagreed with Attorney General Stephan's opinion and suggested we ask for review and re-consideration. A new opinion was requested of Attorney General Carla Stoval. Her opinion was favorable and gave the board some relief and comfort. However, K DFA's counsel recommended that statutory clarification would clear up the matter unequivocally, which is what you have before you in HB 2686. For your information, I have provided both Attorney Generals' opinions and other pertinent correspondence.

Not only does this bill clear up any legal issues and potential confusion caused by the contradicting Attorney General opinions, it provides additional comfort to K DFA board members, who provide a great public service and donate their talents and expertise to K DFA and the State. It also clarifies issues raised by our liability insurance carrier.

I respectfully request that you act favorably on House Bill 2686. I will be happy to answer any questions.

Economic Development
February 12, 1996
Attachment 1



KANSAS

KANSAS DEVELOPMENT FINANCE AUTHORITY

Joan Finney
Governor

Wm. F. Caton
President

September 27, 1994

Robert T. Stephan, Attorney General
Judicial Center
301 SW 10th, 2nd floor
Topeka, Kansas 66603

Dear Bob:

The Kansas Development Finance Authority (K DFA) Board has directed me to contact you relating to liability exposure of the directors, officers and employees of K DFA. More specifically, the Board is concerned whether the statutes governing K DFA adequately protect the Board from personal liability arising out of their volunteer service as directors. The specific statute addressing the legislative protection is K.S.A. 74-8910 which was amended by the 1994 Session. I have enclosed a copy of the 1994 Session Laws for your convenience.

One specific question the Board has is whether the directors are covered under the Tort Claims Act. As you know, K DFA is a body politic and not a full fledged State agency. All Board members are appointed by the Governor with the exception of the Secretary of Commerce and Housing, who is a statutory member.

Your opinion on this subject will help the Board determine if there is any real value in purchasing Directors and Officers Legal Liability coverage, which I might add is very expensive and limited in coverage. Possibly you or one of your assistants has dealt with this subject and it would not be difficult to focus on how this subject applies specifically to K DFA.

Your earliest response will be greatly appreciated. A letter addressed to the K DFA Board would be appropriate. Thank you for your consideration in this matter.

Sincerely,

Wm. F. Caton
President

and empowered to enter into agreements with, to grant, convey, lease or otherwise transfer any property to, or to otherwise transact business with the authority, shall have the same authorization and power to engage in these activities with each subsidiary corporation of the authority.

One or more such subsidiary corporation may be formed for purposes of establishing state tax credit equity funds to assist in the development of low-income and middle-income housing and obtain financing through participation in the program established in section 42 of the federal internal revenue code.

Actions of the authority or any subsidiary corporation relating to housing pursuant to this subsection (v) shall be carried out in accordance with any terms, conditions and limitations relating to policy issues regarding housing, as established by the secretary of commerce and housing.

Sec. 2. K.S.A. 74-8910 is hereby amended to read as follows: 74-8910. No director, employee or officer of the authority shall be liable personally for any reason arising from the issuance of bonds hereunder service of such person as a director, employee or officer of the authority or any subsidiary corporations created pursuant to this act unless such person acted with willfull willful, wanton or fraudulent misconduct or intentionally tortuous conduct.

Sec. 3. K.S.A. 74-8904 and 74-8910 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 14, 1994.

CHAPTER 224

HOUSE BILL No. 2786

AN ACT relating to health care decisions; concerning durable power of attorney for health care decisions; relating to immunity standards for disposition of dead bodies; natural death act, requirements for making declaration; amending K.S.A. 65-28,103 and K.S.A. 1993 Supp. 58-629 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1993 Supp. 58-629 is hereby amended to read as follows: 58-629. (a) A durable power of attorney for health care decisions may convey to the agent the authority to:

(1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy, and disposition of the body;

(2) make all necessary arrangements for care in a hospital, psychiatric hospital or nursing home or similar institution; care personnel to include dentists, nurses, therapists certified, or otherwise authorized to administer health care for the physical, mental and

(3) request, receive and retain, regarding the principal's health including medical records and releases of other documents, such information.

(b) The powers of the agent set out in writing in the agent's decisions, and shall not include previously existing declarations under the natural death act. No declaration shall be effective in the event of disability or incapacity, as defined thereto, as determined under the act, unless the duration of the agent's powers is specifically provided in the declaration. The declaration shall be construed as prohibiting the use of any other legal means through prayer or other means in lieu of medical care and the practices of any church or religious organization if the principal is a member.

(c) In exercising the powers of the agent, the attorney for health care decisions shall act in accordance with the expressed desires of the principal.

(d) Neither the attorney for health care decisions nor any employee of the treating health care provider, director or officer of a health care facility, shall be liable for decisions under a durable power of attorney unless:

(1) Related to the principal's health care; and
(2) the principal and the attorney for health care decisions or persons who are bound by the act or assist in the conduct



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 25, 1994

MAIN PHONE: (913) 296-2215
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ATTORNEY GENERAL OPINION No. 94-140

William F. Caton
Kansas Development Finance Authority
700 S.W. Jackson, Ste. 1000
Topeka, Kansas 66603

Re: State Boards, Commissions and Authorities --
Development Finance Authority -- Exemption from
Liability of Directors and Officers of Authority

State Departments; Public Officers and Employees --
Kansas Tort Claims Act -- Liability of Governmental
Entities for Damages Caused by Employee Acts

Synopsis: The provisions of K.S.A. 74-8910, as amended by L. 1994, ch. 223, § 2, will protect the directors, employees and officers of the Kansas development finance authority from personal liability for conduct arising out of their service to the authority, as long as it is not willful or intentionally tortuous. The directors of the authority are not, however, protected under the tort claims act. Cited herein: K.S.A. 40-4403, repealed, L. 1994, ch. 32, § 2; 40-4405 repealed, L. 1994, ch. 32, § 2; 74-8903; 74-8910, as amended by L. 1994, ch. 223, § 2; K.S.A. 1993 Supp. 75-6102, as amended by L. 1994, ch. 343, § 1; K.S.A. 75-6103; L. 1994, ch. 223, § 2; K.S.A. 74-8910 (Furse 1992).

* * *

Dear Mr. Cator:

You have requested our opinion regarding what personal liability limitations are available for the directors, officers and employees of the Kansas finance development authority.

First you ask what effect the 1994 amendments of chapter 223, § 2, will have upon the liability of the officers and directors of the authority. In 1994, K.S.A. 74-8910 was amended to read as follows:

"No director, employee or officer of the authority shall be liable personally for any reason arising from the service of such person as a director, employee or officer of the authority or any subsidiary corporations created pursuant to this act unless such person acted with willful, wanton or fraudulent misconduct or intentionally tortuous conduct."

It is clear that the intent of the legislature is for the Kansas development finance authority's directors, officers and employees to be protected from personal liability. However, the statute is not clear as to how far this coverage extends.

When the meaning of a statute is not clear, the legislative history should be reviewed. Koch v. Shell Oil Co., 820 F.Supp. 1336 (D.Kan. 1993). The extent of each of the authority's directors', officers' and employees' coverage can be derived from the recent changes made to the statute. Any changes and additions to existing statutes raise a presumption that a change in meaning and effect was intended. Moore v. City of Lawrence, 232 Kan. 353(1982). In this case, the statute was broadened in two ways.

First, the statute was expanded to include more individuals under its protection. Originally, the statute only protected "directors or officers." K.S.A. 74-8910 (Furse 1992). "Employees" were included by the 1994 legislature. L. 1994, ch 223, § 2.

Secondly, the statute expanded the areas over which it protected the individuals listed above. Pursuant to the amendment, the above individuals are now protected from personal liability arising from "service of such" individual

as a "director, employee or officer of the authority or any subsidiary corporations created pursuant to this act. . . ." Id . Originally the statute only protected directors and officers from personal liability in the "issuance of bonds." K.S.A. 74-8910 (Furse 1992).

In addition to the inference drawn from these changes on their face, the legislature's intent can be derived from looking at the purpose for the changes. To determine legislative intent, it is proper to review the circumstances attending the passage of the statute and the purpose intended to be accomplished. West v. Collins, 251 Kan. 657 (1992). When this amendment was introduced, the purpose was "to give increased protection for KDFA's board and staff from potential liability created by this legislation." Minutes, Senate Committee on Financial Institutions and Insurance, March 17, 1994.

After reviewing the legislative history and giving the statutory language its plain and ordinary meaning, we opine that this statute has been expanded to protect directors, officers and employees of the authority from personal liability for conduct arising from their service as such. However, the statute does not protect conduct which is willful, fraudulent or intentionally tortuous.

Your second question is whether or not the directors of the authority are covered under the tort claims act. K.S.A. 75-6103 imposes liability on governmental entities for negligent and wrongful acts of employees of those entities when they are acting within the scope of their employment. The definitions of "governmental entity" and "employee" are set forth in K.S.A. 1993 Supp. 75-6102, as amended by L. 1994, ch. 343, § 1:

"As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

"(a) 'State' means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

. . . .

"(c) 'governmental entity' means state or municipality.

"(d) 'Employee means any officer, employee, servant or member of a board, commission, 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. . . ." Id.

This definition of employee is expansive enough to include the directors of the authority, if the authority is considered to be a governmental entity.

This office has previously opined that members of the boards of directors of the Kansas healthy kids corporation (KHKC), the corporation for change, the technical enterprise corporation (KTEC) and the information network of Kansas (INK) are covered by the tort claims act. Attorney General Opinions No. 86-155, 92-104, 93-62. In determining that the KHKC and corporation for change directors were covered by the tort claims act, we noted that the statutes creating those entities were virtually identical to those statutes creating the KTEC and the INK. Attorney General Opinion No. 93-62. The statute creating the KHKC provided that:

"(a) There is hereby created a body politic and corporate to be known as the Kansas healthy kids corporation. The Kansas healthy kids corporation is hereby constituted a public instrumentality and the exercises of the authority and powers conferred by this act shall be deemed and held to be the performance of an essential governmental function." K.S.A. 1993 Supp. 40-4403, repealed L. 1994, ch.32, § 2. (Emphasis added).

The statute creating the Kansas development finance authority provides that:

"There is hereby created, with such duties and powers as are hereinafter set forth to carry out the provisions of this act, a public body politic and corporate, with corporate succession, to be an independent instrumentality of this state exercising essential public functions, and to be

known as the Kansas development finance authority." K.S.A. 74-8903.

Though the wording of these statutes is not identical, the language of both are similar. Both the KHKC and the authority are bodies politic and corporate. Id. However, there are several significant differences between the statutes.

First, the KHKC was "held to be an essential governmental function," whereas the authority is "exercising essential public functions." Id. Secondly, the KHKC is a "public instrumentality," whereas the authority is an "independent instrumentality." Id. These differences in wording indicate that the legislature intended the authority to be a different type of body than the KHKC.

Another factor which weighed heavily when the KHKC and the corporation for change were found to fall under the tort claims act was the provisions of K.S.A. 1992 Supp. 40-4405, repealed L. 1994, ch. 32, § 2. Attorney General Opinion No. 93-62. That statute provided in part:

"(a) All employees of Kansas healthy kids corporation shall be considered to be state employees and Kansas health kids corporation shall be considered to be a state agency for purposes of the laws governing payroll accounting K.S.A. 40-4405 (Furse 1992). (Emphasis added).

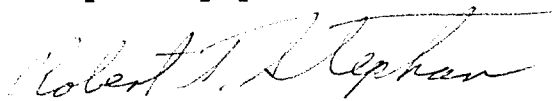
In Attorney General Opinion No. 93-62, we noted that similar language was inserted in statutes covering "employees of the corporation for change . . . Kansas, Inc. and KTEC . . . and those covering INK. . . ." Id. We went on to state that "if these entities, and therefore the employees of the entities while acting within the scope of their employment, are deemed to be performing essential governmental functions, they are entitled to protection under the tort claims act." Id. Similar language does not appear in the statute regarding the Kansas development finance authority.


Additionally, there is strong evidence in the legislative history indicating the authority was not to be considered a state agency. Again, in determining legislative intent it is proper to look at the historical background, circumstances attending the passage of the act and the purpose that was to be accomplished. West v. Collins, supra. When the

legislature was contemplating the creation of the authority, Senator Winter, the chairman of the senate committee on economic development, stated "the Authority is envisioned, in SB 73, to be outside of state government. It would not be a state agency but would be a separate body, created by the state with independent authority and powers." Minutes, Senate Committee on Economic Development, March 5, 1987.

Based upon the comparison between the statutes and the legislative history of the statutes creating the authority, we opine that the Kansas development finance authority is not a "governmental entity" under the tort claims act, and therefore its directors, officers and employees are not covered by that act. However, the directors, employees and officers are protected from personal liability for actions which are performed in the service of the authority under K.S.A. 74-8910, as amended by L. 1994, ch. 223, § 2.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Lawrence J. Logback
Assistant Attorney General

RTS:JLM:LJL:bas



KANSAS

KANSAS DEVELOPMENT FINANCE AUTHORITY

Bill Graves
Governor

Wm. F. Caton
President

June 28, 1995

Ms. Carla Stovall, Attorney General
Judicial Center
301 S.W. 10th, 2nd Floor
Topeka, Kansas 66612-1597

Dear Attorney General Stovall:

On October 25, 1994, Attorney General Robert Stephan issued Opinion No. 94-140 regarding Kansas Development Finance Authority ("K DFA") and significant issues relating to the liability of officers and directors who serve K DFA. The K DFA Board has retained independent counsel to address this issue since it has a very significant impact on the board members, officers and employees of K DFA.

We respectfully disagree with Opinion No. 94-140. Attached is a summary paper issued by our outside counsel, who also disagrees with this Opinion. Please refer to the legal analysis of this paper which presents our position very proficiently.

The Attorney General's Opinion places too much significance on the statutory language creating K DFA as being intentionally different from other State created entities in that it is an "independent instrumentality" rather than a "public instrumentality". K DFA performs essential public functions and receives all of its authority from the Legislature. The language from K DFA's enabling statutes was formulated very closely after the statute which created the Arkansas Development Finance Authority; the significance of the word "independent" is simply that it was used in the Arkansas statute and was not intended to exclude K DFA from being a governmental entity.

We respectfully request that you immediately re-address this issue at your earliest convenience. A reversal of this Opinion would be in the best interest of K DFA, and, in turn, the State of Kansas. Not only does this issue seriously affect the ability of the Governor to appoint quality board members to K DFA (who serve at no compensation), but it also will have a serious affect on the ability of K DFA to continue to serve the various State agencies and departments for which it provides valuable services that are integral to the efficient operation of State government.

Ms. Carla Stovall, Attorney General
June 28, 1995
Page Two

I would be happy to meet with you and your staff if further discussion is needed on this issue. I will make myself available at your earliest convenience. KDFA has a Board meeting on July 7, 1995, and I was hoping to inform them as to when this issue will be re-addressed by your office. Thank you for your attention in this matter.

Sincerely,



Wm. F. Caton
President

WFC:tmg

Attachment



RECEIVED
AUG 04 1995
K D F A

State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

August 3, 1995

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ATTORNEY GENERAL OPINION NO. 95- 78

William F. Caton
President
Kansas Development Finance Authority
700 S.W. Jackson, Suite 1000
Topeka, Kansas 66603-3758

Re: State Boards, Commissions and Authorities--
Development Finance Authority--Exemption From
Liability of Directors and Officers of Authority;
Attorney General Opinion No. 94-140

State Departments, Public Officers and
Employees--Kansas Tort Claims Act--Liability of
Governmental Entities for Damages Caused by
Employee Acts; Attorney General Opinion No. 94-140

Synopsis: The Kansas tort claims act applies to the Kansas
development finance authority because it is an
authority pursuant to K.S.A. 1994 Supp.
75-6102(a). Any conclusion to the contrary in
Attorney General Opinion No. 94-140 is hereby
withdrawn. Cited herein: K.S.A. 68-2003; 68-2004;
74-8104; 74-8903, as amended by L. 1995, ch. 241, §
20; K.S.A. 1994 Supp. 74-8905, as amended by L.
1995, ch. 125, § 2; 74-8910; 75-6102, as amended by
L. 1995, ch. 82, § 7; K.S.A. 75-6103; K.S.A. 1994
Supp. 75-6104, as amended by L. 1995, ch. 56, §
260; 77-201.

*

*

*

Dear Mr. Caton:

You request that we revisit the issue of whether the Kansas tort claims act applies to the Kansas development finance authority (authority). In an opinion issued by former Attorney General Robert T. Stephan, it was concluded that the act did not apply. Attorney General Opinion No. 94-140.

The tort claims act provides that "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" unless an exception applies which, in that event, would immunize the governmental entity and its employees from liability. K.S.A. 75-6103(a); K.S.A. 1994 Supp. 75-6104, as amended L. 1995, ch. 56, 260.

Governmental entity is defined as "state or municipality." K.S.A. 1994 Supp. 75-6102(c). State is defined as "the state of Kansas and any department or branch of state government, or any agency, *authority*, institution or other *instrumentality* thereof." K.S.A. 1994 Supp. 75-6102(a).

The issue we address is whether the authority constitutes one of the entities listed in the definition of state.

The authority was created in 1987 to be a "state-wide multiple-purpose bond issuing authority" which would provide an alternative means of financing capital improvements for state agencies and economic development projects in the private sector. *Minutes*, Senate Committee on Economic Development, February 11, 1987, Attachment III; February 26, 1987, April 1, 1987, Attachment III.

K.S.A. 74-8903(a) provides, in relevant part, as follows:

"There is hereby created, with such duties and powers as hereinafter set forth to carry out the provisions of this act, a *public body politic and corporate*, with corporate succession, to be an *independent instrumentality of this state exercising essential public functions*, and to be known as the Kansas development finance authority." (Emphasis added).

The authority is given wide-ranging powers similar to those of the Kansas turnpike authority and the Kansas technology enterprise corporation, both of which are bodies "politic and

corporate" like the authority. K.S.A. 68-2003; 68-2004; 74-8104. The authority issues bonds to finance capital improvement projects authorized by political subdivisions of the state for educational facilities, health care facilities and housing developments and capital improvement projects for state agencies. K.S.A. 74-8905, as amended L. 1995, ch. 125, § 2.

The authority's board of directors consists of the secretary of the department of commerce, and four members appointed by the governor and subject to confirmation by the senate. The governor designates both the chairperson and the vice chairperson as well as the president. K.S.A. 1994 Supp. 74-8903, as amended L. 1995, ch. 241, § 20.

When construing a statute, a court gives words in common usage their natural and ordinary meaning. *Galindo v. City of Coffeyville*, 256 Kan. 455 (1994); K.S.A. 1994 Supp. 77-201 *Second*. The tort claims act applies to an "authority" of the state. K.S.A. 1994 Supp. 75-6102(a). An authority is a public administrative agency or corporation having quasi-governmental power and authorized to administer a revenue-producing public enterprise. Webster's Third New International Dictionary 146 (1986).

It is our opinion that the plain language of K.S.A. 1994 Supp. 75-6102(a) applies to the Kansas development finance authority because it is a public corporation authorized by the legislature to issue bonds to finance, among other things, capital improvement projects authorized for the state and its political subdivisions.

The touchstone of former Attorney General Stephan's prior opinions concerning whether the tort claims act applied to state-created entities having the attributes of a private corporation depended upon whether they were performing "governmental functions." Attorney General Opinion No. 93-62. In Attorney General Opinions No. 86-155, 92-104 and 93-62, Attorney General Stephan concluded that the tort claims act applied to the Kansas healthy kids corporation, the corporation for change, the Kansas technical enterprise corporation (KTEC) and the information network of Kansas (INK) because they perform governmental functions. However, these opinions focused on the status of the entities as state agencies. Attorney General Opinion No. 94-140 never analyzed the issue of the Kansas development finance authority's status under K.S.A. 1994 Supp. 75-6102(a) as an "authority . . . or other instrumentality" of the state.

Attorney General Opinion No. 94-140's conclusion that the tort claims act did not apply to the authority was based on a comparison of the statutes which created the aforementioned public corporations and great emphasis was placed on the fact that the authority is an "independent instrumentality" exercising "essential public functions" as opposed to a "public instrumentality" performing an "essential governmental function."

In determining whether a function is governmental, the test is whether the activity in question is carried on for the use and benefit of the general public. *Shoemaker v. City of Parsons*, 154 Kan. 387, 391 (1941). It is our opinion that the authority performs a governmental function by enabling political subdivisions of the state, and the state itself, to embark on projects that benefit the general public, and the fact that K.S.A. 74-8903(a) indicates that the authority performs "essential public functions" does not negate the fact that the authority performs a governmental function as well.

We also note that K.S.A. 1994 Supp. 74-8910 provides immunity for the directors, employees and officers of the authority "for any reason arising from the service of such person as a director, employee or officer of the authority" unless the person acts with "willful, wanton or fraudulent misconduct or intentionally tortious conduct." Originally, this statute was enacted to protect only the directors and officers from personal liability arising from the issuing of bonds. The tort claims act provides no such specific immunity. In 1994, the coverage was broadened to include employees and provide immunity from personal liability for any reason arising out of the person's service in that capacity.

This amendment may provide the employees, officers and directors of the authority with greater protection from personal liability than the tort claims act can provide due to the limited number of exceptions from immunity in the tort claims act. In any event, we do not interpret K.S.A. 1994 Supp. 74-8910 as negating coverage under the tort claims act because the former statute does not protect the authority as an entity and may provide more protection for the authority's employees, officers and directors.

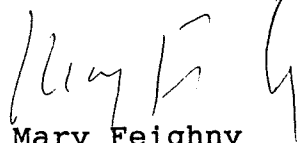
Finally, Attorney General Opinion No. 94-140 notes the recorded comments of a state senator during a committee meeting to bolster the opinion's conclusion that the authority is an entity "outside of state government" and "not a state agency." We do not address in this opinion whether the

authority is a state agency because our task is to determine whether the authority is covered under the tort claims act. We conclude that the tort claims act applies to the Kansas development finance authority by virtue of K.S.A. 1994 Supp. 75-6102(a) and any conclusion to the contrary in Attorney General Opinion No. 94-140 is hereby withdrawn.

Very truly yours,



CARLA J. STOVALL
Attorney General of Kansas



Mary Feighny
Assistant Attorney General

CJS:JLM:MF:jm