

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS**

**FINAL ORDER**

Effective: 08/04/03

In the Matter of the Kansas Association    )  
Of School Boards All Lines Aggregate    )     Docket No. 3178-F  
Property & Liability Pool, Inc.            )

**INITIAL ORDER**

Pursuant to the authority granted to the Commissioner of Insurance by Kansas Statutes Annotated ("K.S.A.") 12-2617 and 77-526,

I, Bob Tomlinson, the designee of Sandy Praeger, the duly elected and qualified Commissioner of Insurance of the State of Kansas as presiding officer in this matter, hereby make the following findings of fact, conclusions of law, and order, to wit:

**Findings of Fact**

1.     The Kansas Association of School Boards All Lines Aggregate Property & Liability Pool, Inc. ("KASB") was created by resolution of the Board of Directors of the Kansas Association of School Boards on January 12, 2002 and was organized for the purpose of providing Pool members various insurance options under the insurance pooling laws of the State of Kansas.

2.     The Commissioner of Insurance ("the Commissioner") has jurisdiction over the subject matter of this proceeding, and this proceeding is held in the public interest.

3.     On June 4, 2003, the Kansas Insurance Department ("KID") wrote KASB and informed them that a preliminary review of the proposed filing of the application for a Certificate of Authority could not be completed until all required material outlined in the letter was submitted to KID.

4. On June 12, 2003, KID disapproved the filing because information had not been received and KID had concerns about rates and solvency of KASB.
5. On June 13, 2003, KASB filed a notice of appeal with KID.
6. On June 19, 2003, a hearing was held at KID.

### **Conclusions of Law**

1. K.S.A. 12-214 provides, in relevant part,

Application for a certificate of authority to operate a pool shall be made to the commissioner of insurance not less than 30 days prior to the proposed inception date of the pool. The application shall include the following:

(a) A copy of the bylaws of the proposed pool, a copy of the articles of incorporation, if any, and a copy of all agreements and rules of the proposed pool...

(b) Designation of the initial board of trustees and administrator...

(c) The address where the books and records of the pool will be maintained at all times. If this address is changed, the pool shall notify the commissioner within 30 days after such change.

(d) Evidence that the annual Kansas gross premium of the pool will be not less than \$250,000 for each of the categories described in subparagraphs (1) through (4) of this subsection: (1) All property insurance under article 9 of chapter 40 of the Kansas Statutes Annotated except motor vehicle physical damage; (2) motor vehicle liability and physical damage insurance; (3) workers' compensation and employers' liability insurance; (4) all casualty insurance under article 11 of chapter 40 of the Kansas Statutes Annotated except insurance under categories (2) and (3) above; (5) group sickness and accident insurance if at the date of issue the annual gross premium for such coverage will be not less than \$1,000,000; and (6) group life insurance if at the date of issue the coverage will insure at least 60% of the eligible participants or the total number of persons covered will exceed 600...

(e) An agreement binding the group and each member thereof to comply with the provisions of the workers compensation act if such coverage is to be provided by the pool. For all lines of coverage, all members of the pool shall be jointly liable for the payment of claims to the extent of the assets of the pool.

(f) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and, with respect to the categories identified in subsection (d)(1) through (4), safety engineering.

(g) A copy of the procedures adopted by the pool to provide claims adjusting and accumulation of income and expense and loss data.

(h) A confirmation that specific and aggregate excess insurance provided by an insurance company holding a Kansas certificate of authority is or will be in effect concurrent with the assumption of risk by the pool, as selected by the board of trustees of the pool, or adequate surplus funds as approved by the commissioner, in the pool...

(i) After evaluating the application the commissioner shall notify the applicant if the plan submitted is inadequate, fully explaining to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 10 days to make an application for hearing by the commissioner after the denial notice is received. A record shall be made of such hearing, and the cost thereof shall be assessed against the applicant requesting the hearing.

(j) Any other relevant factors the commissioner may deem necessary.

2. K.S.A. 12-2629 provides, in relevant part:

The commissioner of insurance shall make such recommendations as deemed advisable to assist Kansas local governments in the effective, efficient and fiscally sound operation of any proposed group-funded pool. Within the time and resources available, the department of insurance shall provide advice and counsel to any group-funded pool.

3. Based on the information contained in paragraphs three (3) through six (6) above, it appears that the Kansas Insurance Department inappropriately denied the application of the Kansas Association of School Boards All Lines Aggregate Property & Liability Pool, Inc. on June 12, 2003. The Commissioner had a fiduciary duty to review the application and was required by law to assist the Kansas Association of School Boards All Lines Aggregate Property & Liability Pool, Inc. in meeting the statutory requirements necessary to create the proposed pool.

4. Based on the information contained in paragraphs three (3) through six (6) above, it appears that the Kansas Association of School Boards All Lines Aggregate Property & Liability Pool, Inc. has not submitted a completed application. Upon submission of the completed application, Commissioner of Insurance has thirty (30) days to review the completed application.

**IT IS THEREFORE, BY THE PRESIDING OFFICER, ORDERED THAT:**

The Commissioner of Insurance shall make such recommendations as deemed advisable to assist the Kansas Association of School Boards All Lines Aggregate Property & Liability Pool, Inc. in the effective, efficient and fiscally sound operation of the proposed group-funded pool.

The thirty (30) days for the review of the application by the Commissioner of Insurance shall commence upon the submission of a completed application by the Kansas Association of School Boards All Lines Aggregate Property & Liability Pool, Inc.

**Notice of Rights**

The Kansas Association of School Boards All Lines Aggregate Property & Liability Pool, Inc. is entitled to a hearing pursuant to K.S.A. § 77-537, the Kansas Administrative Procedure Act. If the Kansas Association of School Boards All Lines Aggregate Property & Liability Pool, Inc. desires a hearing, the company must file a written request for a hearing with:

Linda Sheppard, Assistant General Counsel  
Kansas Insurance Department  
420 S.W. 9th Street  
Topeka, Kansas 66612.

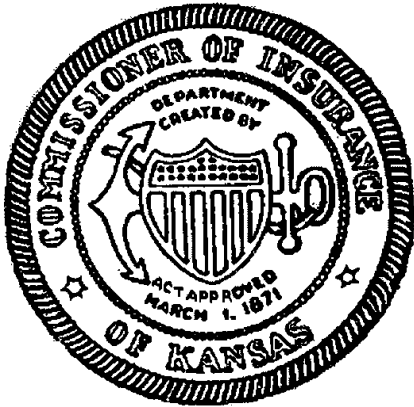
This request must be filed within fifteen (15) days from the date of service of this Order. If the Kansas Association of School Boards All Lines Aggregate Property & Liability Pool, Inc. requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

The Commissioner of Insurance on her own motion may review this Order. If the Commissioner of Insurance so decides, the Commissioner shall give written notice of her intention to review the initial order within fifteen (15) days after service of this Order.

If a hearing is not requested in the time and manner stated above, this Initial Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. § 77-613. In the event that the Kansas Association of School Boards All Lines Aggregate Property & Liability Pool, Inc. files a petition for judicial review, pursuant to K.S.A. § 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

Linda W. Sheppard, Assistant General Counsel  
Kansas Insurance Department  
420 S.W. 9th Street  
Topeka, Kansas 66612.

IT IS SO ORDERED THIS 1st DAY OF JULY, 2003, IN THE CITY OF  
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Bob Tomlinson  
Bob Tomlinson  
Presiding Officer

/s/ Linda Sheppard  
Linda Sheppard  
Assistant General Counsel

**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the above and foregoing Initial Order was served by placing the same in the United States Mail, first class postage prepared, on this 1st day of July, 2003, addressed to the following:

David Cunningham, Esq.  
Kansas Association of School Boards  
1420 SW Arrowhead Road  
Topeka, Kansas 66604  
*Attorney for the Appellant*

John W. Campbell (*Hand-delivered*)  
Kansas Insurance Department  
420 SW 9<sup>th</sup> Street  
Topeka, Kansas 66605  
*Counsel for the Appellee*

/s/ Bob Tomlinson  
Bob Tomlinson  
Presiding Officer