

INSURANCE:  
COUNTY HOSPITALS:

(1) The board of trustees of a county hospital may not purchase liability insurance to cover their own negligence, as they are protected by sovereign immunity. (2) The county hospital board of trustees may authorize the purchase of liability insurance covering the negligence of the employees of a county hospital as a form of compensation. (3) The board of trustees of a county hospital does not waive its sovereign immunity by the purchase of a liability insurance policy covering its employees.

OPINION NO. 15

May 10, 1971

Honorable James Millan  
Prosecuting Attorney  
Pike County Court House  
Bowling Green, Missouri 63334



Dear Mr. Millan:

This is in reply to your request for an opinion of this office in which you ask the following:

"Is your opinion No. 99, dated May 12, 1960 still in effect and is it your opinion that a county hospital operated and maintained under this chapter has no tort liability and cannot properly purchase liability insurance to guard against any liability?"

"If this is still your opinion can it purchase liability insurance to cover negligences of individual employees who might be personally responsible even though a county hospital would not be liable itself for their negligences?"

"My final question, is whether or not such a county hospital would waive its immunity for tort liability, if it is still immune, by purchasing general liability insurance?"

I

The issue of first concern is whether a county hospital, operated pursuant to Sections 205.160 through 205.340, RSMo 1969, is

Honorable James Millan

liable in tort for its negligence, or the negligence of its employees, and whether it may purchase liability insurance to guard against any theoretical liability.

By previous opinion of this office, No. 99, Woods, 5-12-60, and by Opinion No. 528, Conley, 12-16-69, this office has held that a county hospital operated and maintained under the foregoing sections is not liable in tort, and that a county hospital cannot properly purchase liability insurance to guard against a non-existent liability. After a review of the foregoing opinions, and in light of *Abernathy v. Sisters of St. Mary's* (Mo. Sup. en banc 1969) 446 S.W.2d 599; and *Garnier v. St. Andrew Presbyterian Church of St. Louis* (Mo. Sup. en banc 1969) 446 S.W.2d 607, it is the conclusion of this office that the opinions of the Attorney General No. 99, Woods, and No. 528, Conley, correctly express the state of the law in regard to county hospitals.

## II

Your second question asks whether liability insurance, to cover the negligence of individual employees, may be purchased by the board of hospital trustees, even though the trustees would not be liable itself for their employee's negligence.

By reference to Section 205.190(5), RSMo 1969, it can be seen that the hospital board of trustees may fix the compensation for the employees under consideration:

"Said board of hospital trustees shall have power to appoint a suitable superintendent or matron, or both, and necessary assistants and fix their compensation, and shall also have power to remove such appointees; and shall in general carry out the spirit and intent of sections 205.160 to 205.340 in establishing and maintaining a county public hospital."

As can be seen by reference to the above section, the legislature has not attempted to limit the form that consideration for employee services is to take, but has instead given the hospital board of trustees the authority to fix "compensation." The question then becomes, whether a liability insurance policy purchased for an employee may be legally considered as part of said employee's "compensation." In a former opinion of this office, Opinion No. 93, Cason, 9-9-69, we held, under a similar factual instance, that the purchase of insurance for an employee may be considered a proper form of compensation. Thus, it is the opinion of this office, that

Honorable James Millan

those employees hired and compensated consistent with Section 205.190(5), supra, by the board of hospital trustees, may have purchased for them a liability insurance policy covering their negligence during the normal activities of their employment.

III

Your third question is whether a purchase of liability insurance covering the negligence of the hospital board of trustees would act as a waiver of the board's sovereign immunity. As we have previously held in this opinion, the board of trustees of the county hospital have no authority to purchase liability insurance on a non-existent liability, and thus this question becomes moot. The question may arise, however, as to whether the purchase of liability insurance covering the negligence of employees of a hospital board of trustees would act as a waiver of the trustees' sovereign immunity. In Opinion No. 93, Cason, 9-9-69, this office held that purchase of liability insurance as a form of compensation for employee services, was not an attempt by the governmental unit to cover any negligent liability of its own, and thus no waiver or estoppel problems arise.

CONCLUSION

It is the conclusion of this office that:

(1) The board of trustees of a county hospital may not purchase liability insurance to cover their own negligence, as they are protected by sovereign immunity.

(2) The county hospital board of trustees may authorize the purchase of liability insurance covering the negligence of the employees of a county hospital as a form of compensation.

(3) The board of trustees of a county hospital does not waive its sovereign immunity by the purchase of a liability insurance policy covering its employees.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Kenneth Romines.

Yours very truly,



JOHN C. DANFORTH  
Attorney General

Enclosures: Op. No. 99  
5-12-60, Woods  
Op. No. 528  
12-16-69, Conley  
Op. No. 93  
9-9-69, Cason