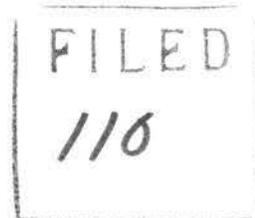


Answer by letter-Klaffenbach

January 20, 1971

OPINION LETTER NO. 110

Honorable Don Owens
State Senator
District No. 20
State Capitol Building
Jefferson City, Missouri 65101



Dear Senator Owens:

This letter is in answer to your opinion request concerning the tort liability of municipal hospitals.

We have examined the cases of *Abernathy v. Sisters of St. Mary's*, 446 S.W.2d 599, and *Garnier v. St. Andrew Presbyterian Church of St. Louis*, 446 S.W.2d 607, both decided by the Missouri Supreme Court en banc in November, 1969 and find nothing in either case that affects the long standing Missouri rule with respect to the immunity of municipal hospitals. In *Schroeder v. City of St. Louis* (Mo. 1950) 228 S.W.2d 677, the court held that the operation of a city hospital by the City of St. Louis constituted a governmental function and the city was protected by the doctrine of sovereign immunity.

As you no doubt know, Section 71.185, RSMo 1969, expressly permits recovery to the limits of existing insurance. This section states in full:

"1. Any municipality engaged in the exercise of governmental functions may carry liability insurance and pay the premiums therefor to insure such municipality and their employees against claims or causes of action for property damage or personal injuries, including death, caused while in the exercise of the governmental functions, and shall be liable as in other cases

Honorable Don Owens

of torts for property damage and personal injuries including death suffered by third persons while the municipality is engaged in the exercise of the governmental functions to the extent of the insurance so carried.

"2. In all suits brought against the municipality for tort damages suffered by anyone while the municipality is engaged in the exercise of governmental functions, it shall be unlawful for the amount of insurance so carried to be shown in evidence, but the court shall be informed thereof and shall reduce any verdict rendered by a jury for an amount in excess of such insurance to the amount of the insurance coverage for the claim."

Yours very truly,

JOHN C. DANFORTH
Attorney General