

COUNTY HOSPITAL - Trustees not liable for tort.

November 25, 1935

11-25



Mr. Davis Benning
Prosecuting Attorney
Pike County
Louisiana, Missouri

Dear Sir:

We have your request of November 21, 1935 for an opinion, which request is as follows:

"Under the provisions of Article 4, Chapter 120, Revised Statutes of Missouri, 1929, this County has established and is maintaining a county hospital.

"I have been requested by the County Court to get an opinion from your office on the following questions

- 1 - To what extent is the County liable for damages, either to employees or to third parties, resulting from the negligence of the hospital employees?
- 2 - Is there any personal liability on the part of the trustees for damages resulting from the negligence of the hospital employees, either to third parties or to other employees?"

As to your first inquiry as to the extent of liability of the court for tort, I enclose here-

#2 - Mr. Davis Benning

with a copy of an opinion written by this office under date of August 30, 1935, which holds that the county is not liable for tort.

By reference to Article 4, Chapter 120, R. S. Mo. 1929, we find that county hospitals are built from public funds, Section 13976, R. S. Mo. 1929, and are supported by funds from the county revenue, Section 13984, R. S. Mo. 1929. The county treasurer is treasurer of the Board of Trustees, receives and pays out all monies belonging to the hospital fund, Section 13978, R. S. Mo. 1929.

The trustees are elected at the regular general election, as other public officers are elected, Section 13977, R. S. Mo. 1929. It therefore appears that the Board of Hospital Trustees are performing public functions of a governmental nature and are therefore not liable for tort. *White v. Alabama Insane Hospital*, 138 Alabama, 479; *Maia v. Eastern State Hospital*, 34 S. E. 617; *Leavell v. Kentucky Asylum*, 91 S. W. 671.

We note that under Section 13978, R. S. Mo. 1929, no bond is required of the trustees, but if a bond were given there would be no liability on that bond for negligence for which third parties could sue. *State ex rel. v. Harris*, 77 S. W. (2d) 846.

It is, therefore, the opinion of this office that the Board of Trustees of a county hospital, under Article 4, Chapter 120, R. S. Mo. 1929, are not liable for tort.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

FER:FE
Enc.