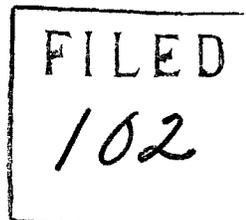


September 10, 1975

OPINION LETTER NO. 102
Answer by letter-Nowotny



Mr. J. Neil Nielsen, Commissioner
Office of Administration
Room 125, State Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Nielsen:

This is in response to your request for an opinion concerning the authority of the state to pay the insurance premium on liability insurance for the heads of the Divisions of Design and Construction, Procurement, and Accounting within the Office of Administration and State Highway Patrolmen, and if so, whether the cost may be paid from monies appropriated in Section 4.245, House Bill No. 1004, 77th General Assembly.

The first question is whether professional liability insurance can be furnished by the state for the heads of the Division of Design and Construction, the Division of Procurement, and the Division of Accounting within the Office of Administration.

It is our opinion that such liability insurance can be purchased under the same theory that we held in Opinion No. 93, dated September 9, 1969, to Senator Cason, and in Opinion No. 61, dated January 23, 1975, to Senator Bild, that liability insurance may be provided by a school board and a second class county for employees of such school board and second class county. The theory in such opinions is that such insurance may be furnished as a part of compensation to its employees. This same theory is equally applicable here, and we accordingly so hold that the insurance may be purchased. However, in the case of any state officer who has a fixed salary, such liability insurance may not be provided if the premium payment is in excess of that fixed salary. Accordingly, in such cases, if liability insurance is to be provided, the premium for an officer with a fixed salary must be taken into account and the amount of salary paid by virtue of cash payments must be reduced by the premium amount.

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Your second question is whether liability insurance may be purchased pursuant to Section 43.200, subsection 2, V.A.M.S., which reads as follows:

"The superintendent of the patrol shall deposit with the governor a bond to the state of Missouri, duly executed by one or more corporate surety companies authorized to do business in this state, in the penal sum of fifty thousand dollars, conditioned upon the payment to persons injured of all damages arising out of any unlawful search, seizure or arrest made by any member of the patrol under the provisions of subsection 1. An action on the bond may be brought by the person injured in the county of plaintiff's residence or in the county in which the unlawful search, seizure or arrest occurred. The premium for the bond shall be paid by the state out of appropriations made for the support and operation of the highway patrol."

You state the problem is that in practice a "penal bond" cannot be obtained because such a bond is unavailable from surety companies, but that "liability insurance" is available to pay persons injured as a result of a search, seizure or arrest made by members of the Highway Patrol and that such "liability insurance" is the customary way of providing for such protection. Thus, your question is whether "liability insurance" can be purchased in lieu of a "penal bond" or whether only a "penal bond" is authorized.

The first rule of statutory construction is to ascertain and give effect to the legislative intent expressed therein. State ex rel. Eaton v. Gmelich, 106 S.W. 618 (Mo. Banc 1907). A statute should be construed so as to harmonize with reason and common sense, and not so as to lead to a useless result. Scott v. Royston, 123 S.W. 454 (Mo. 1909). It is permissible in construing a statute to argue from the convenience or inconvenience which a given construction will work. Barber Asphalt Paving Company v. Hayward, 154 S.W. 140 (Mo. 1912).

In construing a statute, its object and purpose must be kept in mind and such construction placed upon it as will, if possible, effect its purpose. White v. Greenlee, 85 S.W.2d 112 (Mo. 1935). Finally, words and phrases in a statute or ordinance having a technical meaning are to be considered as having been used in their technical sense, unless it appears that they were intended to be used otherwise and that to interpret them accordingly to their technical import would thwart the legislative purpose. City of St. Louis v. Triangle Fuel Co., 193 S.W.2d 914 (St.L.Ct.App. 1946).

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It is clear that the purpose of the statute is to provide some form of insurance coverage in cases of unlawful search, seizure or arrest by members of the Highway Patrol. If the coverage is available by "liability insurance" but not by a "penal bond," we are confident that the legislature did not intend any technical distinction which would interfere with accomplishing the purpose of the law. Therefore, it is our opinion that the legislature did not intend to exclude "liability insurance" coverage in Section 43.200, so long as the coverage accomplishes the purposes of the act.

Your last question is whether such "liability insurance" coverage can be paid for out of the monies appropriated in Section 4.245, House Bill No. 1004, 77th General Assembly. We have reviewed such appropriation to the Commissioner of Administration for the purpose of blanket bond coverage for officials. The purpose here is different from Section 43.200 in that the blanket bond is for the benefit of the state by making payment to the state in case of any wrongdoing on the part of any such state officials covered by the blanket bond. This is entirely different from the purpose of Section 43.200 where the benefits of coverage go to persons damaged by the acts of the members of the Highway Patrol.

Thus, it is our opinion that insurance purchased pursuant to Section 43.200 cannot be paid for out of Section 4.245 of House Bill No. 1004.

Yours very truly,

JOHN C. DANFORTH
Attorney General