



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JOHN C. DANFORTH
ATTORNEY GENERAL

*Physicians - Medical Consultants
to State Hospitals*

OPINION LETTER NO. 160

Mr. Lawrence L. Graham, Director
Department of Social Services
Broadway State Office Building
Jefferson City, Missouri 65101

Dear Mr. Graham:

This letter is in response to your question asking:

"Do the provisions of Section 105.710 RSMO (Cumulative Supplement 1973), setting up the tort defense fund, cover licensed physicians when they act as medical consultants to state owned hospitals?"

It is our understanding that there are various different arrangements made with private physicians relative to medical treatment provided to state patients at state expense. The section to which you refer, Section 105.710, RSMo, includes in its provisions:

". . . other officers, employees and agents of the division of corrections, the division of health, the division of family services, the department of mental health, members of the Missouri national guard and officers and employees of the department of natural resources assigned to state parks and the administration of state parks . . ."

We assume that such consultants are not employees and the question of whether or not they are "agents" of such divisions or departments is largely a question of fact. In the question you pose, however, the facts may vary considerably from case to case; and it appears appropriate that the question of whether a consulting physician is within the scope of the provisions of the tort defense law should, therefore, be determined by this office on a

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case to case basis. That is, it is our view that it is not appropriate for this office to render an official opinion under the provisions of Section 27.040, RSMo, respecting opinions of this office, which would attempt to resolve the myriad situations which exist because this office has a duty to interpret the provisions of the tort defense fund in litigation matters involving the fund at the time the questions arise giving due consideration to the precise facts of each case.

Therefore, we must respectfully decline to issue an opinion on the question you present.

We enclose, however, Opinion No. 133 issued May 3, 1973, to George M. Camp and No. 136 issued April 4, 1973, to Bert Shulimson, were are self-explanatory and illustrate the principles and problems involved in determining whether an employment or agency situation exists.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 133
5-3-73, Camp

Op. No. 136
4-4-73, Shulimson