

June 18, 1976

OPINION LETTER NO. 29
Answer by Letter - Klaffenbach

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



Dear Mr. Graham:

This opinion letter is in response to your question asking as follows:

"Are the employees of the Board of Probation and Parole, including the Board Members, and the Division of Youth Services covered by the Section 105.710 RSMo., since the implementation of the Omnibus State Reorganization Act of 1974?"

You further state:

"Prior to reorganization the Board of Probation and Parole and Division of Youth Services were under Missouri statutes, sections of the Department of Corrections, although autonomous. Such Department no longer exists, and the Board of Probation and Parole is now a division of the Department of Social Services. Section 105.710 RSMo. lists among others covered by that Section as '... employees and agents of the department of corrections...'. Prior to reorganization this did include all employees of the Board of Probation and Parole, Division of Probation and Parole, and the Division of Youth Services."

Mr. Lawrence L. Graham

Section 105.710, House Bill 1734, 78th General Assembly, does not refer to employees and agents of the Department of Corrections but refers to employees and agents of the Division of Corrections.

Prior to the enactment of the Omnibus State Reorganization Act, Senate Bill No. 1 of the 77th General Assembly, First Extraordinary Session, the Board of Probation and Parole, the Division of Probation and Parole and the Division of Training Schools were divisions of the Department of Corrections. Section 549.300, RSMo; Section 216.010, RSMo; Section 219.030, RSMo. The Reorganization Act transferred the Board of Probation and Parole to the Department of Social Services under a type II transfer and also the powers, duties and functions of the State Board of Training Schools to the Division of Youth Services, Department of Social Services under a type I transfer. See subsections 16 and 17, Section 13 of the Reorganization Act. Under subsection 15 of Section 13 the powers, duties and functions of the Department of Corrections were transferred by type II transfer to the Department of Social Services and a Division of Corrections was established. Further, we understand that the provisions of the Department of Social Services Reorganization Plan of 1974 placed the personnel of the Division of Probation and Parole under the Board of Probation and Parole.

However, it is our view that the type of transfer in this particular case is not significant. That is, the Tort Defense Fund, Section 105.710 was amended in 1974 (House Bill 1734, 78th General Assembly) and it is obvious from the changes which were made that numerous amendments to the Tort Defense Fund Act were made to take into consideration that the executive departments of government had been reorganized. That is, for example, the amendments to Section 105.710 included the director of the Department of Social Services as well as the director of the Division of Corrections, the director of the Division of Family Services, the director of the Department of Mental Health, and made other changes which indicated an awareness that the amendments to Section 105.710 were intended to reflect the changes brought about by reorganization. However, it is significant that the Board of Probation and Parole and the Division of Probation and Parole were not included within the amended coverage of such section and that the Division of Youth Services was not included within the amended coverage of such section.

As we have indicated, the director of the Department of Social Services is expressly covered by the Tort Defense Fund as amended. However, the employees of the Department, as such, are not covered.

Mr. Lawrence L. Graham

It is therefore our view that the Board of Probation and Parole, the Division of Probation and Parole, and the Division of Youth Services are not covered under the provisions of Section 105.710 as amended by the laws of 1974.

Very truly yours,

JOHN C. DANFORTH
Attorney General