

STATE LEGAL EXPENSE FUND: Doctors and nurses at the St. Charles County  
Volunteers in Medicine Clinic are covered against  
malpractice lawsuits by the State Legal Expense Fund if the Clinic is a non-profit community  
health center that qualifies as a tax-exempt organization under Section 501(c)(3) of the  
Internal Revenue Code, if the treatment is restricted to primary care and preventative health  
services that do not include abortions, that the services are provided without compensation,  
that any insurance coverage is exhausted, and the physicians and nurses cooperate with the  
attorneys handling the defense of the malpractice claim.

August 17, 2001

OPINION NO. 173-2001

Honorable Chuck Gross  
State Senator, District 23  
State Capitol, Room 434  
Jefferson City, MO 65101

Dear Senator Gross:

You have submitted the following question to this office:

Are the volunteer doctors and nurses at the St. Charles County  
Volunteers in Medicine Clinic covered against medical  
malpractice lawsuits by the State Legal Expense Fund?

To respond to this question, we must examine the provisions of the Legal Expense  
Fund (LEF) found at Section 105.711 to Section 105.726.<sup>1</sup> The categories of individuals  
entitled to coverage under the LEF are set forth in Section 105.711.2. The provisions that  
may apply to doctors and nurses at the St. Charles County Volunteers in Medicine Clinic are  
in subpart (3)(b), (c), or (d). Those subsections include within LEF coverage the  
following: 1) physicians who are employed by or under contract with a city or county health  
department organized under Chapter 192 or Chapter 205, or a combined city-county health  
department, to provide services to patients for medical care for pregnancy, delivery, and child  
care if either the physician performs the services without compensation or is paid by a

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<sup>1</sup>Unless otherwise noted, all statutory references are to RSMo 2000.

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governmental agency; 2) physicians who are employed by a federally-funded community health center to provide services without compensation or are paid from a governmental entity; and 3) physicians, nurses, physician assistants, dentists and dental hygienists who provide services at a city or county health department, a combined city-county health department, or a non-profit community health center that qualifies under Section 501(c)(3) of the Internal Revenue Code as a tax exempt organization if the treatment is restricted to primary care and preventative health services, provided such treatment does not include abortions and if such services are performed without compensation.

You state in your request that the “clinic was formed as a 501(c)(3) corporation” and that it “is associated with the St. Charles County Health Department.” From this information we assume that the Clinic qualifies under the provisions of Section 105.711.2(3)(d). Your request also identifies the doctors and nurses as “volunteers,” which we presume means that they provide their medical services without compensation. Your request is silent as to the type of services provided. For LEF coverage those services can only be primary care and preventative health services and cannot include abortion services. Therefore, for LEF coverage the physicians and nurses must provide only those services and do so without compensation for a tax-exempt clinic.

Once it has been determined that LEF coverage does exist, there are additional conditions for coverage. One condition is if the individual has a policy of insurance, the benefits provided by that insurance must be exhausted before any payment from LEF coverage can be made. Section 105.711.5. Another condition for LEF coverage is found at Section 105.716.2 which provides:

All persons and entities protected by the state legal expense fund shall cooperate with the attorneys conducting any investigation and preparing any defense under the provisions of sections 105.711 to 105.726 by assisting such attorneys in all respects, including the making of settlements, the securing and giving of evidence, and the attending and obtaining witness to attend hearings and trials. Funds in the state legal expense fund shall not be used to pay claims and judgments against those persons and entities who do not cooperate as required by this subsection.

These provisions are self-evident; cooperation with the defense of a claim is a requirement for coverage under the LEF.

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### CONCLUSION

Doctors and nurses at the St. Charles County Volunteers in Medicine Clinic are covered against malpractice lawsuits by the State Legal Expense Fund if the Clinic is a non-profit community health center that qualifies as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, if the treatment is restricted to primary care and preventative health services that do not include abortions, that the services are provided without compensation, that any insurance coverage is exhausted, and the physicians and nurses cooperate with the attorneys handling the defense of the malpractice claim.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Nixon', with a large, sweeping flourish extending to the right.

JEREMIAH W. (JAY) NIXON  
Attorney General