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94-00065

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NOV 24 1993

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Honorable James H. Lackey
City of Mobile
P. O. Box 1827
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Municipal Courts - Sentences
- Medical Expenses - Prisons
and Prisoners

The City of Mobile could be held liable for the medical expenses or personal injury of a participant in the community service program regardless of whether the participant has signed a release or waiver of liability.

Dear Judge Lackey:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Is the waiver of rights utilized by the Mobile Municipal Court for Community Service Program participants sufficient to absolve the city from liability for medical expenses arising from any personal injury to the participant which might occur while he is performing tasks for the Community Service Program?

FACTS AND ANALYSIS

The Mobile Municipal Court has proposed a written waiver of rights for participants in their community service program which contains the following sentences:

"I understand that, as a participant in the Community Service Program, I have no right to any pay or benefits, nor do I have the right to be defended or indemnified for any lawsuits against me arising from my participation in the Community Service Program. I agree to hold harmless any and all agencies where I perform my community service.

"I understand that I have no legal right to seek Workman's Compensation from the City of Mobile or from the agency where I am placed in the event that I am injured while participating in the program."

We note that while the waiver specifically states that the participant has "no right to seek Workman's Compensation" in the event that he is injured, it makes no mention of medical expenses or compensation for personal damages or injuries. We do not believe that an agreement to "hold harmless any and all agencies" would necessarily be interpreted by a court to limit the agencies' liability in case of a lawsuit.

The Attorney General has held that a municipality may be held liable for the medical expenses of a person who is injured while working out a fine in the custody of the city. Attorney General's opinion to Honorable Henry C. James, Mayor, dated October 9, 1991, A.G. No. 92-00009. The Attorney General has also held that the county or sheriff could be held liable for any injuries sustained by or caused by a state inmate working for the county under the supervision of county personnel, regardless of whether the inmate has signed a release form stating that he will not hold the county liable. Attorney General's opinion to Sheriff Joe B. Robertson, dated January 16, 1992, A.G. No. 92-00116. Whether liability attaches is, of course, completely dependent upon the factual nature of each situation and must be determined on a case-by-case basis. Attorney General's opinion to Honorable Morris L. Thigpen, dated September 6, 1990, A.G. No. 90-00378. However, no

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release form signed by a participant in a work program, regardless of the language therein, can guarantee the municipality immunity from liability.

As you know, whether a release or waiver of rights is enforced by a court depends not only upon the language of the waiver, but also upon the voluntary understanding of the individual's relinquishment of those rights. Many factors are considered by the courts in determining whether an individual has knowingly and understandingly waived specific rights. While the language of the form waiver from which we have quoted above might be introduced as evidence in a particular case, we certainly do not believe that the waiver of rights would be held valid by all courts in all situations.

CONCLUSION

The City of Mobile could be held liable in some circumstances for the medical expenses or personal injury of a participant in the community service program regardless of whether the participant has signed a release or waiver of liability.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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