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STATE OF ALABAMA
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Health Care Authorities – Liability
Insurance – Settlements – Claims –
Madison County

If claims are subject to the statutory caps for governmental entities, a health care authority created under section 22-21-310, *et seq.*, of the Code of Alabama must pay or settle liability claims within the maximum amounts set by statute; but for claims not covered by the statute, an authority may pay or settle amounts in excess of the statutory caps.

A health care authority may establish and maintain a program for self-insurance to protect against liability claims, including claims that are not subject to the statutory maximums.

Dear Mr. Campbell:

This opinion of the Attorney General is issued in response to your request on behalf of the Health Care Authority of the City of Huntsville.

QUESTION 1

May the Health Care Authority of the City of Huntsville ("Authority") pay all judgments and fines, or amounts in settlement of claims, along with reasonable expenses (including attorneys' fees actually and necessarily incurred) without regard to whether the amounts or amounts paid are more than the maximum amount of damages against a governmental entity under section 11-93-2 of the Code of Alabama for those claims that are not covered by the statute?

FACTS AND ANALYSIS

The Authority is a health care authority organized by a city or county governing body under section 22-21-310, *et seq.*, of the Code of Alabama. ALA. CODE § 22-21-310, *et seq.* (1997, Supp. 2004). This question involves the applicability of section 11-93-2 of the Code of Alabama, which imposes a maximum recovery of damages of \$100,000 or \$300,000 in the aggregate for bodily injury or death claims and a \$100,000 per-occurrence maximum for loss of property against a "governmental entity." ALA. CODE § 11-93-2 (1994). A "governmental entity" is defined in section 11-93-1 to include "county or city hospital boards when such boards are instrumentalities of the city or county or organized pursuant to authority from a municipality or county." ALA. CODE § 11-93-1(1) (1994). The Authority seeking the opinion herein is subject to this statute.

The purpose of section 11-93-2 is to limit the amount of damages recoverable from governmental entities and, likewise, to limit the amounts of any settlement or compromise of claims against such entities. A "claim" is defined in the statute as follows:

Any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages caused by bodily injury or property damage caused by a negligent or wrongful act or omission *committed by any employee of the governmental entity while acting within the scope of his employment*, under circumstances where the

governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the State of Alabama.

ALA. CODE § 11-93-1(5) (1994) (emphasis added).

The Alabama Supreme Court has interpreted this definition as not applying to all types of tort claims or to all employees of the governmental entity. In *Ravi v. Coates*, 662 So. 2d 218 (Ala. 1995), a medical malpractice action was brought against a physician, the health care authority, and two nurse employees of the hospital. A jury verdict was returned for \$500,000 against all defendants. The hospital's judgment was reduced to \$100,000 under section 11-93-2, but no reduction was allowed for the two nurse employees. The Alabama Supreme Court interpreted the statutory cap to apply only to a "governmental entity" that was defined as the hospital board, but not the nurse employees. *Id.* at 223. In a later case, *Smitherman v. Marshall County Comm'n*, 746 So. 2d 1001 (Ala. 1999), a negligence action was filed against the county commission, the county commissioners, and the county engineer, alleging that a road was not maintained in a safe condition. The Court held that, as a matter of law, the statutory cap of section 11-93-2 covered the claims against the county commission itself and the county commissioners and the county engineer when sued in their official capacities as county employees. This case distinguished the *Ravi* case by stating that the nurse in *Ravi* was not acting as a public employee in her official capacity, and was therefore, not subject to the cap as were the county commissioners and the county engineer in the *Smitherman* case. *Id.* at 1009. These cases illustrate that a hospital authority may face civil judgments or settlement decisions where the statutory cap may apply to judgments against the board, its directors, and officers, but not judgments against other employees of the hospital.

In an opinion to Honorable J. H. Ford, Jr., President, The DCH Health Care Authority, dated December 30, 1988, A.G. No. 89-00105, this Office opined that a municipal hospital authority could purchase liability insurance to indemnify, without regard to the statutory caps, its board members, officers, principal executive officer, and a physician acting as an agent of the Authority against monetary losses from any action or proceeding in which these officers and agents may be involved because of their positions or as a result of official actions taken by them in the course of performing their duties. The *Ford* opinion stated that section 22-21-318 authorizes a health care authority to provide insurance to protect its officers and directors. *Id.* at 5. The opinion also noted that

the decision to obtain insurance coverage is basically a business decision to be made by the governing body of the public agency. *Id.* at 6. With respect to statutory limits, the opinion states as follows:

We have recognized that governmental entities may purchase liability insurance providing for coverage of their employees in excess of any statutory limits on tort liability that are not applicable to such employees, although such limits may be applicable to such governmental entities themselves.

Id. at 5.

Your request states that, just as the statutory cap may not be applicable to certain agents or employees of governmental entities, the courts have recognized that certain types of tort actions are also not covered by the cap. Examples would include civil rights violations under 42 U.S.C. §1983 (*Patrick v. City of Florala*, 793 F. Supp. 301 (M.D. Ala. 1992)) and suits for wrongful termination of employment (*Macon v. Huntsville Utilities*, 613 So. 2d 318 (Ala. 1992)). This illustrates another reason why governmental entities, such as a health care authority, must be cognizant of its liability exposure for both its employees and for certain kinds of claims in which the statutory cap does not apply.

Section 11-93-2 of the Code of Alabama, as interpreted by the Alabama courts, places dollar caps on certain governmental entities and its directors, officers, and employees who are sued in their official capacities. The statute prohibits payment of claims in excess of those statutory amounts for those entities and persons. The prohibition does not apply to those employees or claims for which the statutory maximums do not apply. Thus, the Authority may purchase liability insurance for employees excluded from the cap without being limited by the statutory caps.

CONCLUSION

If claims are subject to the statutory caps for governmental entities, a health care authority created under section 22-21-310, *et seq.*, of the Code of Alabama must pay or settle liability claims within the maximum amounts set by statute, but for claims not covered by the statute, an authority may pay or settle amounts in excess of the statutory caps.

QUESTION 2

May the Authority self-insure against general liability claims, including without limitation, claims based upon negligence or malpractice, brought against it or any of its directors, officers, agents, or employees or against the Authority for tort actions that are excluded from the statutory maximums by establishing, maintaining, and administering self-insurance for payment or settlement of these claims?

FACTS AND ANALYSIS

Your request states that the Authority is considering the adoption of an amendment to its bylaws providing for the establishment and operation of a program for the purpose of self-insuring against general liability claims against the Authority or any of its directors, officers, agents, or employees.

Section 22-21-318 sets forth the powers granted to health care authorities. These powers include the power to "invest, in any trust fund established under and subject to the general laws of the state for investment or self-insurance purposes with investment authority as may be authorized by law for such trusts, any funds of the authority available therefore; . . . " ALA. CODE § 22-21-318(a)(26) (1997).

This provision of law permits an Authority to create and maintain a program for the purpose of insuring itself against liability claims filed against the Authority, or any of its directors, officers, agents, or employees, including those that are not subject to the statutory maximum recovery of damages.

CONCLUSION


A health care authority may establish and maintain a program for self-insurance to protect against liability claims, including claims that are not subject to the statutory maximums.

Honorable Joe W. Campbell
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/BFS
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