

1975 WL 174064 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 2, 1975

In Re: Tort Liability Insurance for State Officers and Employees

*1 Honorable Irvin D. Parker
Administrator
Department of Consumer Affairs
600 Columbia Building
Post Office Box 11729
Columbia, South Carolina 29211

Dear Mr. Parker:

Your letter of October 30, 1975, requests the opinion of this Office on the following question:

Whether it would be proper or appropriate for the Department of Consumer Affairs to spend public funds to purchase tort liability insurance covering (1) torts committed while acting in the official course of duty by public officials; and (2) personal torts committed in a personal capacity not involving official duties.

The most recent declaration by the Supreme Court of this State on the question of liability by reason of tort of public officers and employees appears to be in [Long v. Seabrook](#), 260 S.C. 562, 197 S.E.2d 659, the major conclusions of which appear to be as follows:

“The failure of a public official to comply with the laws governing and regulating his powers and duties may give rise to liability.

“In a tort suit against a public official whose duties are discretionary, it must be shown that in the performance or nonperformance of those duties, the public official was guilty of corruption, or bad faith, or influenced by malicious motives, before recovery can be had.”

The procurement of tort liability insurance, in my opinion, can only be made when there is authority therefor granted by statute. This conclusion is based upon consideration of the fact that constitutional provisions may require it, and the General Assembly has acted in instances where it conceived that the expenditure of public monies should be made for such insurance. It has done so in one instance by the provisions of Section 1-359.1 which authorize payment of premiums for insurance of the various governmental entities of the State to procure insurance through the auspices of the State Budget and Control Board to protect personnel against tort liability arising in the course of their employment. It has acted also with respect to the procurement of liability insurance for the protection of certain Highway Department personnel and in the case of insurance to protect employees who are instructors in institutions of higher learning and who are engaged in the handling of explosive materials.

It is my opinion that insurance cannot be authorized to protect against liability of governmental agencies which possess sovereign immunity. The rule of sovereign immunity prevails in this State except where it has been limited, as in the case of the State Highway Department, counties, and cities, where subjection of those entities to tort liability has been statutorily permitted to a limited extent. The procurement of liability insurance with public funds to protect public employees can only be procured where authorized by statute. As noted above, this procedure has been provided in some instances.

*2 With best wishes,
Cordially,

Daniel R. McLeod
Attorney General

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