

1974 WL 27620 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 31, 1974

*1 The Honorable L. L. Lewis
Chairman
Board of Trustees
Lexington County School District One
Route 3, Box 418
Leesville, South Carolina 29070

Dear Mr. Lewis:

Thank you for your letter of January 23, 1974, requesting the views of this Office as to whether boards of trustees may purchase liability insurance for members of the board and pay for the same from district tax funds.

I am enclosing herewith a copy of an opinion which sets forth my views on the subject and which is dated. November 6, 1967 (67 Attorney General's Opinions 175).

This opinion represents the present opinion of this Office which continues to regard such expenditures as of doubtful validity, irrespective of the need and merit of such a procedure. I am enclosing also an opinion which expresses a more recent position of this Office, which opinion is directed to the Vice President for Financial Affairs at Lander College, and is dated August 20, 1973. It is in the same tenor as the previous opinion referred to.

Some re-enforcement of this position is indicated by the provisions of Section 22-14 of the Code of Laws, which authorizes colleges and universities to procure liability insurance which may result from the negligence of employees in the performance of their regularly assigned duties. This was enacted in 1968 and I know that it was brought about by the demands of one university which felt that its professors handling explosive materials in laboratories might incur a greater exposure to potential liability. This was the primary consideration given to me in informal discussions, although there were some secondary reasons which prompted the enactment of the statute. Such a statute indicates that legislative enactment is necessary to authorize such procurement of liability insurance.

It may be possible to defend such expenditures on the grounds that they constitute a valid 'fringe benefit' similar to that which is accepted for such purposes as health insurance. In this connection, some objection may be raised on the legal ground that if liability protection is to be afforded, it must be afforded to all employees rather than a restricted class of such employees or officers unless it can be shown that an unusual degree of exposure is an incident of the work which they perform.

Because of the growth of suits against public officials seeking monetary damages, there has been a constant demand for some degree of protection, particularly from physicians at State hospitals, and from law enforcement and correctional officers. Mr. Leeke, of the Department of Corrections, is vitally interested in the matter and has accomplished some results in procuring legislation. Some agencies of the State procure and pay for liability insurance, and some have abandoned the practice. So far as I am aware, this has not been questioned in the courts in this State, although I have encountered tangential problems arising in instances where liability insurance exists.

*2 At the present time, I can only say that the purchase of this insurance by a school board in the manner you outline would be subject to doubt and, in my view, the best approach to the matter is to seek legislation authorizing this in appropriate circumstances.

Very truly yours,

Daniel R. McLeod
Attorney General

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