

TODD K. BROWN
EXECUTIVE DIRECTOR



TEXAS

WORKERS' COMPENSATION COMMISSION

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~~File # ML-26223-94~~

April 13, 1994

~~FILE # fg-abb2-dm~~

~~I.D.# 25917~~

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Opinion

Sarah J. Shirley
Chair, Opinion Committee
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

RE: Purchase of liability insurance for state officers and employees. (RQ 662)

RQ-770

Dear Ms. Shirley:

Thank you for the opportunity to submit our thoughts on the above matter.

We have welcomed the fact that a state agency now has authority to purchase Directors and Officers Liability insurance. (Senate Bill 5, General Appropriations Act of the Seventy Third Legislature, Regular Session, Article 5, Section 53). We have the same questions as presented by Andrew Samson of the Texas Parks and Wildlife Department. The TWCC believes that if the cost of buying Directors and Officers Liability insurance for directors and officers will be the same amount if we insured the complete agency, then the agency should be able to do this since no additional appropriated funds will be used.

We do, however, have two additional questions we would like you to consider. Is the issuance of these policies in effect a waiver to a certain extent of the state's liability? Does this mean we are giving permission to sue the state? When I refer to the state I am also referring to the Directors and Officers since a suit against them in their official capacities has been interpreted by the courts to be a suit against the state.

We would appreciate it if you would include these questions in your analysis. If you have any questions, please call me at (512) 440-3977.

Sincerely,

Susan Cory
General Counsel

GAR/SC/smc

cc: Gloria A. Reyes, Assistant General Counsel



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 Executive Director

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January 12, 1994

Opinion Committee

RD-662

Honorable Dan Morales
 Attorney General of Texas
 P.O. Box 12548
 Capitol Station
 Austin, Texas 78711-2548

Re: Request for an Attorney General's Letter Opinion.

Dear General Morales:

Senate Bill 5 (General Appropriations Act of the Seventy-third Legislature, Regular Session), Article 5, Section 53 (copy enclosed), authorizes state agencies to purchase director's and officer's liability insurance for the, "agency's appointed commission or board members and executive management staff."

It is our plan to acquire such insurance and we have initiated inquiries into its availability and costs. More than one insurance company has offered full coverage for all agency employees at no additional cost over the costs for coverage of appointees and the highest levels of executive management. We have two questions related to this opportunity.

First, if such additional coverage can be obtained at no additional costs to the state, is it permitted by the scope of Section 53?

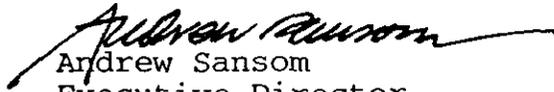
Second, whether or not such additional coverage is permissible, what level of management within the Department is insurable as "executive management staff" described by Section 53?

If you require any information on management responsibilities, duties, or compensation which can be of assistance in reviewing this request, please feel free to

Honorable Dan Morales
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contact the Department's General Counsel, Paul M. Shinkawa,
at 389-4433.

Sincerely,


Andrew Sansom
Executive Director

AS:PMS

enclosure