

OPINION 6

hospitalization of a poor person who is a resident of his township.

2. A township trustee may not refuse hospital care at the township's expense to a resident who is on the township trustee's relief roll unless such care is made necessary as a result of injury.

3. A township trustee may refuse hospitalization at township expense where such hospitalization is made necessary as a result of injury, regardless of the manner in which the injury may have occurred. In such cases he shall report the matter to his local county department of public welfare in accordance with the provisions of Burns' 52-148a, *supra*.

4. A township trustee may contract with a hospital at an agreed daily rate for the care of persons for whose medical and surgical attendance he is responsible.

5. In your question No. 5, you have requested factual information with respect to existing contractual arrangements between township trustees and hospitals throughout the state. The office of the Attorney General has never been furnished with this statistical material, and I would suggest that you contact the Indiana Township Trustees' Association.

OFFICIAL OPINION NO. 6

January 12, 1962

Mr. James E. McCart
Assistant Commissioner
Department of Correction
804 State Office Building
Indianapolis 4, Indiana

Dear Mr. McCart:

I have before me your request for an Official Opinion upon the following questions:

1. What would be the personal responsibility or liability of an employee who while driving a state owned automobile became involved in an accident where he was at fault?

“2. What would be the personal liability of an employee, who while transporting inmates on official business, became involved in an accident in which an inmate was killed or injured?”

The Legislature, by the provisions of the Acts of 1941, Ch. 52, Secs. 1 and 2, as found in Burns' (1952 Repl.), Sections 39-1818 to 39-1819, has provided that the State of Indiana or any of its agencies may purchase liability insurance to protect officers, appointees, agents and employees from damages caused through the operation of motor vehicles owned by the state. It is my understanding that such policies have been purchased by the various departments and are at present in effect and cover all state-owned motor vehicles. These policies carry a provision that the insurance carrier may not set up as a defense the immunity of the state from suit. Therefore, to the extent of the policy limits, the employee is protected from damages for the negligent operation of a state-owned motor vehicle.

The Constitution of Indiana, Art. 4, Sec. 24, provides that suits may be brought against the state only if provision has been made therefor by general law. The Indiana Legislature has not seen fit to enact such a law concerning causes of action arising out of negligent acts of employees and therefore the state would be immune from any claim for damages in excess of the policy limits. This immunity of the state does not extend to its officers, appointees, agents and employees unless the action be one in substance against the state. See: *State et al. v. Young et al.* (1958), 238 Ind. 452, 458, 151 N. E. (2d) 697.

An inmate of the Indiana Boys School is a public ward and is committed to the custody and control of the Superintendent of the Boys School. Such custody and control carries with it freedom from liability in the proper exercise of such power by employees in carrying out of statutory duties but would not relieve them from liability for damages for negligent acts in general. Particularly would this be true in connection with activities not directly connected with the duties of the superintendent as set forth in the Acts of 1883, Ch. 18, Sec. 5, as found in Burns' (1956 Repl.), Section 13-906.

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Where an inmate of the Indiana Boys School was a passenger in a motor vehicle driven by an employee and was injured in an accident, an action could be brought against the employee for damages based on negligence. If a judgment were rendered against the employee, then, as stated before, he would be protected to the extent of the insurance policy limits.

In answer to your questions it is my opinion :

1. That an employee driving a state-owned vehicle, which is properly in his possession, would only incur personal liability for damages for negligent operation of such vehicle in excess of the insurance policy limits on such vehicle.
2. The same answer would apply in a situation where an inmate of the Boys School was a passenger and a judgment based on negligence was rendered against the employee.

OFFICIAL OPINION NO. 7

January 12, 1962

Mr. Harry E. McClain, Commissioner
Department of Insurance
509 State Office Building
Indianapolis 4, Indiana

Dear Mr. McClain :

This is in answer to your request for an Official Opinion concerning the question of the applicability of the Acts of 1961, Ch. 263 to the holders of all lines fire and casualty agent's licenses, your inquiry reading, in part, as follows :

“What is the interpretation to be given to the proviso found at Section 12 of Chapter 263 of the Acts of 1961? This proviso is as follows :

“* * * Provided, further, That the provisions of this act shall not apply to the holder of a valid ‘all lines fire and casualty agent’s license.’