



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN 11, TEXAS

WALTON GARR  
ATTORNEY GENERAL

December 12, 1963

Hon. C. H. Cavness  
State Auditor  
Austin, Texas

Opinion No. C- 193

Re: Can public liability insurance coverage be carried on operations of housing facilities of Texas State Educational Institutions financed by Housing and Home Finance Agency

Dear Mr. Cavness:

You have requested our opinion as to whether public liability insurance can be carried on operations of housing facilities of Texas State Educational Institutions financed by the House and Home Finance Agency under Title IV of the Housing Act of 1950 (Public Law 475, 81st Congress, as amended). You state that public liability insurance coverage is a part of the terms and conditions of such loan agreements, and has prompted this opinion request. We also observe that such terms and conditions also include therein fire and extended coverage, boiler insurance, and use and occupancy insurance.

The question of whether the several State agencies are authorized to carry various types of insurance has been construed on numerous past occasions by this office. These opinions hold that State warrants may not be issued for the payment of an insurance premium in the absence of a specific appropriation for that purpose. These holdings have also been influenced by the legislative directive found in Senate Concurrent Resolution No. 3, 37th Leg., 2nd Called Session, 1921, wherein it is stated that no insurance policy shall be taken out upon any of the public buildings and contents thereof. As there is no specific appropriation for the payment of liability insurance premiums in this instance, no payment for such an expense is authorized. Your attention is directed to the enclosed Attorney General's Opinions Nos. 0-1100, 0-1762, 0-5790, 0-184, 0-3000, 0-2130 and 0-5824 in this connection.

It must also be pointed out that there is an even more important reason why there is no authorization for securing liability insurance coverage. Broadly speaking, liability insurance protects the insured against judgments obtained against such insured for damages caused by it or its agent. It is well established that the State cannot be sued without its consent, and further that the State is not liable for the torts of its officers, agents, or employees acting in a governmental function. Fonseca v. State, 297 S.W.2d 199, (Tex.Civ. App. 1956) and cases there cited.

It is, therefore, our opinion that Texas State Educational Institutions are not authorized to carry public liability insurance on their housing facilities.

S U M M A R Y

Public liability insurance coverage cannot be carried on operations of housing facilities of Texas State Educational Institutions.

Very truly yours,

WAGGONER CARR  
Attorney General

By:

  
Paul Phy  
Assistant

PP:mkh

APPROVED:  
OPINION COMMITTEE

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