



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL,  
ATTORNEY GENERAL**

November 21, 1975

The Honorable R. W. Steen, President  
Stephen F. Austin State University  
Nacogdoches, Texas 75961

Opinion No. H- 742

Re: Whether a state university  
may use appropriated funds  
or auxiliary enterprise  
funds to purchase liability  
insurance for administrative  
officers and regents.

Dear President Steen:

You have requested our opinion regarding whether a state university may use appropriated funds or auxiliary enterprise funds to purchase liability insurance for its administrative officers and regents.

In Attorney General Opinion H-70 (1973), we concluded that the trustees of an independent school district might purchase liability insurance to protect themselves from the expense of defending litigation brought against them individually for acts or omissions committed by them in the good faith discharge of their official duties, and to protect themselves from awards in all cases in which the district was or might have been held liable for the same damages. The opinion was predicated upon section 20.48 of the Texas Education Code, which specifically permits the expenditure of "[l]ocal school funds . . . for the payment of insurance premiums."

Neither the Education Code nor any other statute, however, makes any provision for the purchase of general liability insurance by or on behalf of a state university. We believe that the absence of any statutory authorization similar to section 20.48 which would authorize liability insurance coverage as to the University itself is fatal to the argument that coverage may be extended to the trustees. The 1975 General Appropriations Act, Acts 1975, 64th Leg., ch. 743, article 4, section 19-b, permits the purchase of "insurance premiums, where authorized by law . . . from appropriated funds." (Emphasis added). Since there is, however, no statutory authorization for the payment of such premiums, even by implication as in Opinion

H-70, it is apparent that this expenditure may not be made from appropriated funds. We note that article 5, section 55 of the General Appropriations Act, found at Acts 1975, 64th Leg., ch. 743, specifically prohibits the expenditure of appropriated funds "for the purpose of purchasing policies of insurance covering claims arising under the Texas Tort Claims Act."

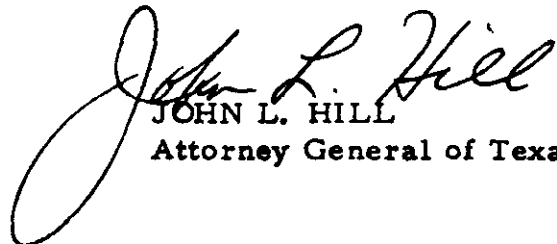
Neither do we believe that liability insurance may be purchased from auxiliary enterprise funds. Although such funds are committed to the control of the governing board of the institution by section 51.002 of the Education Code, section 51.006 provides that "the provisions of this subchapter are subordinate to the general appropriations act for the support of each institution." Since, as we have indicated, the General Appropriations Act permits the purchase of insurance premiums only where authorized by law, it is our opinion that the payment of liability insurance premiums for administrative officers and regents would not be a proper expenditure of the kind of auxiliary enterprise funds recognized by section 51.002.

We therefore conclude that a state university may use neither appropriated funds nor auxiliary enterprise funds to purchase liability insurance for its administrative officers and regents.

S U M M A R Y


A state university may use neither appropriated funds nor auxiliary enterprise funds to purchase liability insurance for its administrative officers and regents.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
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DAVID M. KENDALL, First Assistant

  
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C. ROBERT HEATH, Chairman  
Opinion Committee