

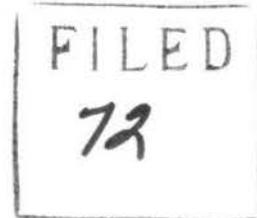
WORKMEN'S COMPENSATION:

The State of Missouri is required to be a self-insurer with respect to employees of the Division of Mental Health under the Workmen's Compensation Law.

OPINION NO. 72

February 23, 1971

Honorable Edna Eads
State Representative
District No. 149
Room 203, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Eads:

This opinion is in response to your letter inquiring:

"In the field of Mental Health, can Workmen's Compensation Insurance be provided by any other means than self-insured?"

Section 202.024, RSMo 1969, states in part as follows:

"1. The provisions of chapter 287, RSMo, governing workmen's compensation are extended to include all employees and authorized student and volunteer workers of the division [of Mental Health]. The state of Missouri shall be a self-insurer and assume all liability imposed by chapter 287, RSMo, in respect to such personnel of the division, without insurance and the attorney general shall appear on behalf of and defend the state in all actions brought by such personnel of the division under the provisions of the workmen's compensation law."

This section was revised in 1969 to include student and volunteer workers, otherwise, the sense of the section was not

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changed from the law as previously enacted in 1957.

Section 105.810, RSMo 1969, states:

"The provisions of chapter 287, RSMo, governing workmen's compensation are extended to include all state employees. The state of Missouri shall have the option to become a self-insurer and assume all liability imposed by chapter 287, RSMo, or to purchase insurance in companies licensed to write workmen's compensation insurance in this state and if the state elects to self-insure, the attorney general shall appear on behalf of and defend the state in all actions brought by state employees under the provisions of the workmen's compensation law."

Section 105.820, RSMo 1969, provides:

"The head of each executive department and constitutional agency and in the case of the judicial branch of the government the chief justice of the supreme court, and in the case of the legislative branch of the government the president pro tem of the senate and the speaker of the house of representatives acting together, shall exercise the option to insure or self-insure in the best interest of the state and shall perform such duties as may be necessary or incidental to carry out effectively the purposes of sections 105.800 to 105.850."

Section 105.830, RSMo 1969, provides:

"Nothing in sections 105.800 to 105.850 shall affect any department or constitutional agency which is already under the provisions of chapter 287, RSMo, but every employee of each department and agency shall be covered by the provisions of chapter 287, RSMo."

The Department of Public Health and Welfare is a department of state government and is composed of three divisions, one of which is the Division of Mental Health, Section 191.010, RSMo 1969, and accordingly, any legislation that would affect a division of the department would also affect the department.

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In view of contradictory language between Section 202.024 and Sections 105.810 and 105.820, we endeavored to determine whether Sections 105.810 and 105.820 supersede Section 202.024 with respect to the right of the state to purchase insurance to provide workmen's compensation coverage for employees of the Division of Mental Health. In this connection, we also considered the effect of Section 105.830 on the operation of Section 105.810 and 105.820 with respect to Section 202.024.

Section 202.024 locked the Division of Mental Health into a plan of workmen's compensation coverage with the State of Missouri as self-insurer. The revision of Section 202.024 in 1969 did not release the division from this obligation of self-insurance by the state.

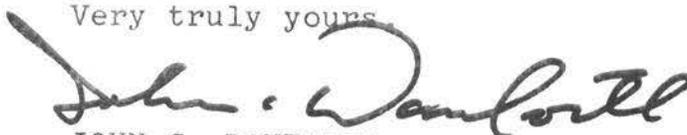
Section 105.810 extended Chapter 287, RSMo to include all state employees and gave to the State of Missouri the option to self-insure or to purchase insurance and, Section 105.820 granted the right to exercise this option in the best interests of the state to the head of each executive department and constitutional agency, Chief Justice of the Supreme Court, President Pro Tem of the Senate and Speaker of the House of Representatives.

The wordage of Sections 105.810 and 105.820 indicate an intention of inclusiveness in granting this right to exercise the option to insure or self-insure. However, there is no reference therein to Section 202.024, and any thought that Sections 105.810 and 105.820 supersede Section 202.024 with respect to releasing the Division of Mental Health from the statutory obligation of self-insurance by the state is dispelled by the clear language of Section 105.830 that "Nothing in Section 105.800 to 105.850 shall affect any department or constitutional agency which is already under the provisions of chapter 287, RSMo, . . ." This conclusion is also supported by the revision of Section 202.024 in 1969 by the Seventy-fifth General Assembly of Missouri without releasing the Division of Mental Health from the statutory requirement of self-insurance.

CONCLUSION

Therefore, it is the opinion of this office that the State of Missouri is required to be a self-insurer with respect to employees of the Division of Mental Health under the Workmen's Compensation Law.

Very truly yours,



JOHN C. DANFORTH
Attorney General