

Keith Schafer, Ed.D., Director

2. Moneys in the state legal expense fund shall be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against:

(1) The state of Missouri, or any agency of the state, pursuant to section 537.600, RSMo; or

(2) Any officer or employee of the state of Missouri or any agency of the state, including, without limitation, elected officials, appointees, members of state boards or commissions and members of the Missouri national guard upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency of the state, provided that moneys in this fund shall not be available for payment of claims made under chapter 287, RSMo; or [Emphasis added.]

* * *

Section 402.210.1, RSMo Supp. 1989, relating to the Missouri Family Trust Fund, provides in part:

402.210. Board of trustees--members, appointment, term, qualifications, expenses--"immediate family" defined.--1. There is hereby created the "Missouri Family Trust Board of Trustees". The board of trustees shall consist of nine persons appointed by the governor with the advice and consent of the senate. The members' terms of office shall be three years and until their successors are appointed and qualified. The trustees shall be persons who are not prohibited from serving by sections 105.450 to 105.482, RSMo, and who are not otherwise employed by the department of mental health. The board of trustees shall be composed of the following: [Emphasis added.]

* * *

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Section 402.215, RSMo Supp. 1989, provides in part:

402.215. Board of trustees,
duties--provisions for trust
documents.--1. The board of trustees is
authorized and directed to establish and
administer the Missouri family trust. The
board shall be authorized to execute all
documents necessary to establish and
administer the trust including the
formation of a not for profit corporation
created pursuant to chapter 355, RSMo, and
to qualify as an organization pursuant to
section 501(c)(3) of the United States
Internal Revenue Code.

2. The trust documents shall include
and be limited by the following provisions:

(1) The Missouri family trust fund
shall be authorized to accept contributions
from any source, other than the life
beneficiaries and their respective spouses,
to be held, administered, managed, invested
and distributed in order to facilitate the
coordination and integration of private
financing for individuals who have a
handicap or are eligible for services
provided by the Missouri department of
mental health, or both, while maintaining
the eligibility of such individuals for
government entitlement funding. All
contributions, and the earnings thereon,
shall be administered as one trust fund;
however, separate accounts shall be
established for each designated
beneficiary. The income earned, after
deducting administrative expenses, shall be
credited to the accounts of the respective
life beneficiaries, in proportion to the
amount of the contribution made for each
such life beneficiary, reduced from time to
time by any distributions or encroachments,
to the total contributions, reduced from
time to time by any distributions or
encroachments, made for all life
beneficiaries.

* * *

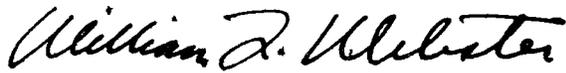
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We conclude that the trustees of the Missouri Family Trust Fund are "appointees" entitled to coverage by the State Legal Expense Fund as provided in Section 105.711.2(2), RSMo Supp. 1989. Section 402.210, RSMo Supp. 1989, specifically provides for appointment of a trustee upon "appointment by the governor with the advice and consent of the senate." It is also evident that the scope of Sections 402.200 through 402.225, RSMo Supp. 1989, reaches statewide, and is aimed at assisting those individuals receiving services from your department. There exists a close relationship between the Missouri Family Trust Fund and your department. Sections 402.200 through 402.225, RSMo Supp. 1989, give the trustees specific duties relating directly to the facilitation of private funding in line and consistent with government entitlement for those individuals eligible to receive services from your department. This close relationship between the activities of the trustees and the mission of your department is another factor which we believe indicates that the trustees as appointees are those types of appointees envisioned by Section 105.711.2(2), RSMo Supp. 1989.

CONCLUSION

It is the opinion of this office that the trustees of the Missouri Family Trust Fund are entitled to coverage by the State Legal Expense Fund as provided in Section 105.711, RSMo Supp. 1989.

Yours very truly,



WILLIAM L. WEBSTER
Attorney General