

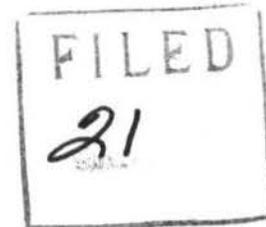
STATE EMPLOYEES:
TORT DEFENSE FUND:
CONSERVATION COMMISSION:

The Conservation Commission may not pay a final judgment for actual or punitive damages obtained against one of its enforcement officers as a result of his conduct while he was in the actual performance of his enforcement duties.

OPINION NO. 21

January 29, 1975

Mr. Carl R. Noren, Director
Department of Conservation
Post Office Box 180
Jefferson City, Missouri 65101



Dear Mr. Noren:

This letter is in response to your opinion request in which you ask:

"May the Conservation Commission pay a final judgment for actual and punitive damages obtained against one of its enforcement officers as a result of his conduct while he was in the actual performance of his enforcement duties?"

Because of the divergent nature of actual and punitive damages, we will consider this as a request which asks two questions, to-wit:

I.

May the Conservation Commission pay a final judgment for actual damages incurred by one of its enforcement officers in the performance of his duties?

II.

May the Conservation Commission pay a final judgment for punitive damages incurred by one of its enforcement officers in the performance of his duties?

At the outset, it should be noted that this opinion deals only with the situation where the judgment obtained was rendered

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in a civil cause brought against the agent and not against the Department of Conservation.

I.

The Missouri legislature, by the enactment of the "Tort Defense Fund" (Sections 105.710, et seq., RSMo Supp. 1973), has determined that the state will reimburse certain agents or officers for certain final judgments obtained against them for acts performed in connection with their official duties. Prior to the 1973 revision, Section 105.710(1) read as follows:

"As part of the compensation to be paid to the director of the department of corrections, the director of the division of health, the director of the division of mental diseases and other officers, employees and agents of the department of corrections, the division of health and the division of mental diseases the comptroller is authorized to pay from the 'Tort Defense Fund', which is hereby created, all final judgments awarded in courts of competent jurisdiction to any claimant against the aforesaid officers, employees, and agents, for acts arising out of and performed in connection with their official duties in behalf of the state. Payment shall be limited to a maximum of one hundred thousand dollars for all claims arising out of the same act except that no payment shall be made for any claim which arises because of or in connection with the operation of a motor vehicle either privately or publicly owned."

This subsection did not name the Missouri Conservation Commission as one of the agencies entitled to participate in the "Tort Defense Fund." Instead, it specifically enumerated the Department of Corrections and Divisions of Health and Mental Diseases as those agencies to benefit from its coverage. In 1973 this subsection was amended to read as follows:

"1. As part of the compensation to be paid to the director of the department of corrections, the director of the department of public health and welfare, the director of the division of health, the director of the division of welfare, the curators and regents of

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public institutions of higher education which award baccalaureate degrees, the director of the division of mental health, the adjutant general and other officers, employees and agents of the department of corrections, the division of health, the division of welfare, and the division of mental health, and members of the Missouri national guard while on active duty for the state of Missouri, the comptroller is authorized to pay from the 'Tort Defense Fund', which is hereby created, all final judgments awarded in courts of competent jurisdiction to any claimant against the aforesaid officers, employees, agents, and members of the Missouri national guard, for acts arising out of and performed in connection with their official duties in behalf of the state. Payment shall be limited to a maximum of one hundred thousand dollars for all claims arising out of the same act, except that no payment shall be made for any claim which arises because of or in connection with the operation of a motor vehicle either privately or publicly owned."
(emphasis added)

Again, in this revision, employees of the Missouri Conservation Commission were not named to receive the benefit of its coverage.

It is a general principle of statutory construction that the mention of one thing implies the exclusion of another. (For an exhaustive annotation on this "rule of exclusion," see: 73 Am.Jur.2d Statutes §212 and the citations collected thereunder.) As exceptions in a statute strengthen the force of law in cases not excepted, so enumerations weaken it in cases not enumerated. Marx & Haas Jeans Clothing Co. v. Watson, 67 S.W. 391 (Mo.Banc 1902). Hence, a statute which mandates a thing to be done in a given manner or by certain persons or entities normally implies that it shall not be done in any other manner or by any other persons or entities. Botany Worsted Mills v. United States, 278 U.S. 282, 49 S.Ct. 129, 73 L.Ed. 379 (1929). Although this rule of exclusion is not a rule of law, it does provide the preferred construction of a statute where its coverage is specifically extended to certain persons, classes, or entities by enumeration. State v. Bengsch, 70 S.W. 710 (Mo.Banc 1902); Citizens' Nat. Bank of Kansas City v. Graham, 48 S.W. 910 (Mo.Banc 1898); Henderson v. Koenig, 68 S.W. 72 (Mo.Banc 1902).

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It is submitted that, from the plain language of Sections 105.710, et seq., that it was the clear intent of the legislature to give only those agencies named in subsection (1) the privilege of reimbursing their officers and agents for successful tort judgments obtained against them. This contention is supported not only by the rule of exclusion, but also by the 1973 revision of that subsection which enlarged the group of agencies covered by the fund, yet continued to enumerate the individual entities so named. Therefore, it seems apparent that to extend the coverage of the Tort Defense Fund would be unwarranted and contrary to the obvious legislative intent expressed in enacting this law.

Because of this, it is the opinion of this office that the Missouri Conservation Commission, not being within the state's Tort Defense Fund, may not reimburse its agents or officers for an actual damage judgment obtained against them for their acts in connection with the performance of their duties.

II.

The second question posed in this inquiry need not be reached since the contentions asserted in Part I of this opinion would preclude the Conservation Commission from paying a punitive damage award obtained against one of its enforcement agents for his acts in connection with the performance of his duties. Further, even assuming, arguendo, that the Conservation Commission could pay a judgment under the provisions of the "Tort Defense Fund," this office has explicitly held that punitive damages could not be paid from this fund, as such payment would violate public policy (Attorney General's Opinion Letter No. 46, Sartorius, May 28, 1974).

CONCLUSION

Therefore, it is the opinion of this office that the Conservation Commission may not pay a final judgment for actual or punitive damages obtained against one of its enforcement officers as a result of his conduct while he was in the actual performance of his enforcement duties.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Timothy Verhagen.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. Ltr. No. 46
5-28-74, Sartorius