

OFFICIAL OPINION NO 75-21, Professional Liability Insurance for all state employees

February 7, 1975

Miss Alice Kundert
State Auditor
State Capitol Building
Pierre, South Dakota

OFFICIAL OPINION NO 75-21

Professional Liability Insurance for all state employees

Dear Miss Kundert:

You have requested an official Attorney General's opinion based on the following factual situation:

The Commissioner of Administration has notified all departments, constitutional offices, Supreme Court Administrator, Legislative Research Council and bureau commissioners of that action being contemplated for a blanket professional liability coverage for all state employees.

Based on the above factual situation you request an opinion as to whether or not there is statutory authority to take such action.

At Volume 56 Am. Jur. 2d P. 264 the general proposition is cited that a municipal corporation, which has the power to increase the wages of its employees, may take out group insurance for their benefit, the expenditure being viewed by the court as for a public purpose. Although the present question does not concern a municipality, it is nonetheless my view that the legal theory of that general proposition is sound. Of course the best and simplest solution to the question you presented would be to have legislation specifically cover the matter, but in the absence of such legislation other legal sources and theories must be resorted to. (See SDCL 7-12-26.1.)

In 1948 AGR 253, the Attorney General concluded that the state highway commission could

purchase liability insurance covering drivers of vehicles of the department if it is necessary in order to obtain and to keep competent drivers and to accomplish the work of the state highway department. In that opinion, the Attorney General placed reliance on the fact that the state highway commission had determined that the purchase of insurance was necessary to meet the above described needs and standards. In 1955-56 AGR 299, this standard of "contractual necessity" was again utilized and, in this instance at least, to reach the conclusion that in the absence of any finding of necessity by the board of regents, purchase of liability insurance was not authorized.

It appears to me that the standard of "contractual necessity," referred to in the above cited Attorney General's opinions, should be construed broadly enough so that if a state agency, constitutional officer, or other entity hiring employees on behalf of the state, chooses to purchase liability insurance for its employees, the purchase of such insurance would be authorized without the cumbersome formality of a finding that such insurance is "necessary" in order to obtain and keep competent employees for the operation involved. The answer to your question therefore is YES.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

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