

To: Mr. F. William Griffith

June 27, 2000

**Chari Arizona State Governing Committee for
Tax Deferred Annuities and Deferred
Compensation Plans**

**Re: Indemnification of Members of the
Governing Committee for Tax Deferred
Annuities and Deferred Compensation
Plans**

**I00-018
(R00-020)**

Question Presented

You have asked whether members of the Governing Committee for Tax Deferred Annuities and Deferred Compensation Plans (the "Governing Committee") are covered by the State's self-insurance program for acts performed in the course and scope of their duties.

Summary Answers

Members of the Governing Committee are State officers or employees, and, therefore, they should be covered by the State's self-insurance program for acts performed in the course and scope of their duties on behalf of the Governing Committee.

Background

The Governing Committee is responsible for overseeing tax deferred compensation and annuity programs for State employees. A.R.S. § 38-871. Specifically, the Governing Committee:

- .investigates and approves tax deferred compensation and annuity programs;
- .enters into agreements with life insurance companies, bank trustees or custodians, and investment counseling firms;
- .arranges for consolidated billing and efficient administrative services to ensure that the tax deferred compensation and annuity programs operate with only incidental expense to the State;
- .arranges for financial and performance auditing of the programs; and
- .promulgates regulations concerning the solicitation of employees for deferred compensation and annuity programs.

Id.

The members of the Governing Committee include: (1) three State employees appointed by the Governor; (2) the Director of the Department of Administration ("DOA") or that person's appointee; (3) the Superintendent of the State Banking Department or that person's appointee; (4) the Director of Insurance or that person's appointee; and (5) the Director of the State Retirement System.

Your question concerns whether the State's self-insurance program covers members of the Governing Committee. DOA is required to "obtain insurance against loss, to the extent . . . necessary and in the best interests of the State." A.R.S. § 41-621(A). This statutory responsibility is met by the State's self-insurance program implemented by the Risk Management Division of

DOA. See Arizona Administrative Code ("A.A.C.") R2-10-101 through 2-10-207.

Analysis

Under A.R.S. § 41-621(A)(3), the State's self-insurance program covers "the State and its departments, agencies, boards and commissions and all officers, agents and employees thereof and such others as may be necessary to accomplish the functions or business of the State and its departments, agencies, boards and commissions. . . ." State officers, agents and employees are covered for acts and omissions in the course and scope of their employment or authority. *Id.*

The term "State" as used in A.R.S. § 41-621 includes "the branches of state government and the respective offices, divisions, departments and entities into which state government is divided." See Ariz. Att'y Gen. Op. I90-009. Various factors determine whether an entity is a State department, agency, board, or commissions under A.R.S. § 41-621, including whether the entity: (1) is established by Arizona statute or constitution; (2) is controlled by the State, through one of its three branches (legislative, executive or judiciary); and (3) works for the State as a whole rather than for a limited constituency within the State. *Id.*

The term "officer" or public officer," means:

the incumbent of any office, member of any board or commission, or his deputy or assistant exercising the powers and duties of the officer, other than clerks or mere employees of the officer.

A.R.S. §38-101(3).

Similarly, an "employee" is:

an officer, director, employee or servant, whether or not compensated or part time, who is authorized to perform any act or service, except that employee does not include an independent contractor. Employee includes non-compensated members of advisory boards appointed as provided by law.

A.R.S. § 12-820.

Here, the Governing Committee is created by statute to perform specific functions related to the operation of State government. Therefore, the Governing Committee is a State entity covered by the State's self-insurance program, and the members of the Governing Committee are officers or employees within A.R.S. § 41-621. Thus, to the extent that members of the Governing Committee act within the course and scope of their employment or authorization for the Governing Committee and no exceptions for coverage apply, they should be covered by the State's self-insurance program.⁽¹⁾

The Risk Management Division of DOA determines who is covered under A.R.S. § 41-621, and to what extent they are covered on any particular claim. *Id.* If the Governing Committee, or any member, receives notice of a claim or is served with a lawsuit for any actions taken on behalf of the Governing Committee, the notice of claim or complaint and associated paperwork should be immediately referred to Risk Management as described in the applicable regulations. See A.A.C. R2-10-101 through 108; A.A.C. R2-10-201 through 207.

Conclusion

Because the Governing Committee is a State entity, and because members of the Governing Committee are State officers or employees, the members of the Governing Committee should be covered by the State's self-insurance program for acts or omissions in the course and scope of their duties performed on behalf of the Governing Committee. In the event that a claim is asserted against the Governing Committee or a member thereof, the claim information should be forwarded immediately to Risk Management for processing.

Janet Napolitano
Attorney General

1. *See, e.g.*, A.R.S. § 41-621(L)(1) (excluding coverage for acts determined by a court to be a felony).

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