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DEPARTMENT OF SOCIAL SERVICES: Foster Care Parents.

SOVEREIGN IMMUNITY: Tort Liabilities.

The Department of Social Services is not authorized to reimburse foster parents for expenses incurred in defending a negligence action resulting from alleged wrongful conduct of a state ward in their care.

Recovery of damages and legal expenses incurred by foster parents in defending a negligence action resulting from alleged negligent supervision of a state ward is barred by the doctrine of sovereign immunity when such suit is filed against the Department of Social Services.

Opinion No. 4833

November 20, 1974.

Honorable Ralph Ostling  
State Representative  
The Capitol  
Lansing, Michigan 48901

As a result of the following circumstances, you have requested an opinion from me.

Certain licensed foster parents had under their care a child committed to the state through the Michigan Children's Institute. While in their care, the child was involved in a tractor accident with a car. These licensed foster parents were sued for negligence. A jury determined that there was no cause for action on any of the Plaintiff's claims. However, the family incurred legal fees of \$2,048.52 in defending themselves.

You have therefore asked:

1. Does the Michigan Department of Social Services have the authority to pay for the legal expenses of licensed foster parents in defending a lawsuit initiated as a result of actions of a state ward placed in their foster care by the Department of Social Services?
2. Can the Michigan Department of Social Services rightfully and properly refuse to reimburse these foster parents for the costs of defending themselves against suit initiated as a result of action of a state ward placed in their foster care by the Department of Social Services?
3. Can the family sue the State or the Michigan Department of Social Services for reimbursement?

Responding to your first question, the Department of Social Services, as a state agency, can exercise only such powers as are conferred upon the Department by the constitution or statute, since "[p]ublic officers have and can exercise only such powers as are conferred on them by law . . ." Supreme Court of Michigan, *Roxborough v Unemployment Compensation Commission*, 309 Mich 505, 510; 15 NW2d 724, 727 (1944), citing with approval from 59 CJ, States, §286.

There is no specific grant of statutory power to the Department of Social Services which would authorize it to reimburse foster parents for expenses incurred in defending a negligence action initiated because of alleged wrongful conduct of a state ward placed in their care.

The authority and duties of the Department with respect to the care of foster children are set forth in the Social Welfare Act, 1939 PA 280, §14, MCLA 400.14; MSA 16.414 which states:

"Sec. 14. The state government shall have and be vested with the following additional powers and duties:

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"(c) . . . assume responsibility for all children committed to it by the juvenile division of the probate court under the provisions of [MCLA 803.101 *et seq.*] . . . and [MCLA 804.101 *et seq.*] . . . In order to provide service to children the department may provide institutional care, supervision in the community, boarding care . . . and other child welfare services necessary to meet the needs of such children; . . ." (emphasis supplied)

The above-quoted statute grants various powers to the Department of Social Services "[i]n order to provide *service to children.*"

The nature of this particular power and its attendant duties make it difficult to imply therefrom the power to provide the reimbursement in question since such reimbursement would not appear to be a *service to the child* or assist in his care, but rather would go to the foster parents whose own negligence is alleged to have allowed the state ward to act in a manner resulting in injury to others. Such reimbursement cannot be said to be a service to the ward.

The answer to your first question, therefore, is that the Michigan Department of Social Services does not have the authority, either by statute or inherently from the nature of its duties with regard to foster children, to pay for the legal expenses of a family in defending itself against a suit initiated as a result of actions of a state ward placed in their foster care by the Department of Social Services.

My response to your first question also disposes of your second question.

Your third question is whether the family can sue the state or Michigan Department of Social Services for reimbursement. The State of Michigan and the Michigan Department of Social Services, as an agency thereof, are endowed by statute with sovereign immunity from liability while engaged in governmental functions pursuant to 1964 PA 170, §7, which provides:

"Except as in this act otherwise provided, all governmental agencies shall be immune from tort liability in all cases wherein the government agency is engaged in the exercise and discharge of a governmental function." MCLA 691.1407; MSA 3.996(107)

Since the purpose of the foster care program is not proprietary in nature, the Michigan Department of Social Services is engaged in a governmental function while engaged in the administration of that program. If the Department cannot be liable in tort while engaged in the "exercise and discharge" of that function, it follows that the Department cannot be liable in tort for the negligence of persons to whom the care of a state ward is entrusted since such entrustment resulted from the exercise of a governmental function authorized by law.

Further, there is no authority for the Department of Social Services to enter into any contract for foster care which would place liability on the state where the state is protected by the doctrine of sovereign immunity.

Thus, answering your third question, although foster parents can sue the State of Michigan or the Department of Social Services for reimbursement, recovery in such a suit is barred because of the sovereign immunity from liability in tort provided by statute and the lack of authority of the Department to enter into any agreement abrogating such immunity.

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*Attorney General.*

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**PUBLIC SERVICE COMMISSION: Flow-through of purchase and interchange power expense.**

The Public Service Commission is not authorized to adopt a rate schedule allowing an automatic flow-through of purchase and interchange power expense to rate payers without prior notice and hearing.

Opinion No. 4844

November 20, 1974.

Mr. William R. Ralls, Commissioner  
Michigan Public Service Commission  
5th Floor, Law Building  
Lansing, Michigan

**QUESTION:** Does the Public Service Commission have authority to approve a utility's rate schedule that provides for an automatic flow-through to rate payers of increased cost of purchase and interchange power without requiring notice and hearing prior to each rate increase?

The power and jurisdiction of the Public Service Commission is set out in 1939 PA 3, §6; MCLA 460.6, MSA 22.13(6) which in pertinent part states:

"The public service commission is vested with complete power and jurisdiction to regulate all public utilities in the state except any municipally owned utility and except as otherwise restricted by law. It is vested with power and jurisdiction to regulate all rates, fares, fees, charges, services, rules, conditions of service and all other matters pertaining to the formation, operation or direction of such public utilities. It is further granted the power and jurisdiction to hear and pass upon all matters pertaining to or necessary or incident to such regulation of all public utilities, including electric light and power companies, whether private, corporate or cooperative, gas companies, water, telephone, telegraph, oil, gas and pipeline companies, motor carriers, and all public transportation and communication agencies other than railroads and railroad companies."

In addition, 1909 PA 106, §7; MCLA 460.557, MSA 22.157, also sets forth the Commission's powers in regard to regulation of electrical rates. The statute reads in part: