S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
500 CHARLOTTE AVENUE
NASHVILLE, TENNESSEE 37243-0497

August 24, 2000

Opinion No. 00-136

Liability of the State for Errors in the Issuance of Permits

QUESTION

What is the financial liability of the State of Tennessee for errors in the issuance of septic tank system permits?

ANSWER

The State of Tennessee is not monetarily liable for errors in the issuance of septic tank system permits.

ANALYSIS

You indicate that the State of Tennessee has inspected and issued permits for the operation of a number of septic tank systems which have subsequently malfunctioned. You ask whether the State is liable for the costs related to the malfunction of the septic tank systems, including property damage, cleanup expenses, etc.

The Tennessee constitution provides that the State is immune from suit except as it consents to be sued. Tenn. Const. Art. I, §17. No court has the power to entertain a tort suit against the State with a view to reach the state treasury. Tenn. Code Ann. §20-13-102. The only forum for tort suits against the State is provided by the Tennessee Claims Commission. Tenn. Code Ann. §9-8-307. The jurisdictional statute for the Claims Commission expressly prohibits claims against the State arising out of or resulting from the "issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization" except for the unconstitutional taking of private property. Tenn. Code Ann. §9-8-307(a)(2)(A). Thus, the State is immune from suit and cannot be held liable for damages arising from allegations that it has erroneously issued a permit for a septic tank system.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KIMBERLY J. DEAN
Deputy Attorney General

Requested by:

The Honorable Doyle E. "Butch" Lewis
State Representative, 47th District
108 War Memorial Building
Nashville, Tennessee 37243-5068