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August 6, 2002

Opinion No. 02-086

Civil Liability of Foster Care Agency Pursuant to Tenn. Code Ann. §37-10-101

QUESTION

Does Tenn. Code Ann. §37-10-101 make a foster care agency liable for certain tortious acts of a child in state custody whom the state contracts to place in the agency's care?

OPINION

Not under the circumstances you describe, because the statute confers liability only upon a guardian or parent of a child, not upon an agency which has the child only by virtue of a contract with the state.

ANALYSIS

The statute about which you inquire provides:

> Any municipal corporation, county, town, village, school district or department of this state, or any person, or any religious organization, whether incorporated or unincorporated, shall be entitled to recover damages in an action in assumpsit in an amount not to exceed ten thousand dollars ($10,000) in a court of competent jurisdiction from the parents or guardian of the person of any minor under eighteen (18) years of age, living with the parents or guardian of the person, who maliciously or willfully causes personal injury to such person or destroys property, real, personal or mixed, belonging to such municipal corporation, county, township, village, school district or department of this state or persons or religious organizations.

Tenn. Code Ann. §37-10-101.

The statute plainly confers liability only upon a parent or guardian with whom a child lives. It may

be possible for an entity such as a foster care agency to obtain guardianship of a child. *See, e.g.*, Tenn. Code Ann. §36-1-102(24) and (25) (including both persons and entities in the definition of the terms "guardian" and "guardianship"). However, under the circumstances outlined in your question, the foster care agency appears to receive placement of a child only through contract with the Department of Children's Services, and not through guardianship by court order or operation of law. Under such circumstances, a foster care agency is not made liable by Tenn. Code Ann. §37-1-101 for tortious acts of a child in its care.

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