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Opinion No. 06-034

Liability of TRICOR Board Members

QUESTIONS

1. In general, what is the extent of personal liability of members of the Board of the Tennessee Rehabilitative Initiative in Correction (TRICOR) for their acts/omissions as Board members?

2. How would it affect the personal liability of Board members if the Board submits a revised set of personnel practices to the Commissioner of Personnel under the authority of TCA § 41-22-407(d), and these guidelines are approved by the Commissioner?

3. How would it affect the personal liability of Board members if the General Assembly granted the Board statutory authority to develop its own personnel practices without the approval of the Commissioner of the Department of Personnel?

OPINIONS

1. Board members, as state employees, are immune from liability for state law claims within the scope of their office provided they do not act willfully, maliciously, criminally or for personal gain. Depending on the circumstances, Board members may have qualified immunity for federal law claims. If sued personally, board members can request legal representation at the expense of the State of Tennessee and reimbursement of any judgment.

2. Compliance with Tenn. Code Ann. §41-22-407(d) would not affect this analysis.

3. Receipt of statutory authority to develop TRICOR personnel practices independent of the Commissioner of Personnel would not affect this analysis.

ANALYSIS

For personal liability purposes, members of the TRICOR board are deemed to be state employees. The statutory definition of state employee includes "any person designated by a department or agency head as a participant in a volunteer program authorized by the department or

agency head." Tenn. Code Ann. §8-42-101(3)(B). According to Tenn. Code Ann. §41-22-412, TRICOR board members are deemed "participant[s] in a volunteer program as referenced in §8-42-101."

As state employees, Board members are immune from state law claims as provided in Tenn. Code Ann. §9-8-307(h) for acts or omissions within the scope of their duties as Board members. The State of Tennessee immunizes state employees as defined by Tenn. Code Ann. §8-42-101(3) from liability for acts or omissions within the scope of the officer's or employee's office or employment, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain. Tenn. Code Ann. §9-8-307(h). Instead, the State of Tennessee assumes liability for their negligence in the Claims Commission subject to certain limitations. Tenn. Code Ann. §9-8-307.

State employees can be held individually liable for federal law violations as the immunity of §9-8-307(h) does not apply. However, depending on the circumstances, qualified immunity from liability may be available. Qualified immunity protects public officials carrying out executive or administrative functions from liability for money damages "insofar as their conduct does not violate clearly established [federal] statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L.Ed.2d 396 (1982). If sued personally, board members can request legal representation at the expense of the State of Tennessee and reimbursement of any judgment. Tenn. Code Ann. §§8-42-103, 9-8-112(h).

Compliance with Tenn. Code Ann. §41-22-407(d) or receipt of statutory authority to develop TRICOR personnel practices would not affect this analysis in the absence of any change to the definition of Board members in Tenn. Code Ann. §41-22-412 as "participant[s] in a volunteer program as referenced in §8-42-101."

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