

# MAINE STATE LEGISLATURE

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November 3, 1975

Maynard C. Dolloff, Commissioner

Agriculture

S. Kirk Studstrup, Assistant

Attorney General

Insurance on Maine State Building, Eastern States Exposition

Your memorandum of September 29, 1975, concerned the renewal of liability insurance for bodily injury and property damage, covering the State-owned building at the Eastern States Exposition. The specific question was whether the State has ". . . 'sovereign immunity' from liability and thus [is] not obligated to maintain insurance coverage." The answer to both parts of the question is affirmative.

As a general rule, the states have sovereign immunity which extends to liability for tort damages and to suit in both its own courts and those of a sister state, unless such immunity is waived by the state constitution or statute. See 81 C.J.S., States, §§ 130 and 214; and 47 Am. Jur.2d, Municipal, School and State Tort Liability, § 69 et seq. The State of Maine and its departments and agencies benefit from this sovereign immunity, which has not been waived by the Constitution or by general statute, with one exception. The one exception is the waiver of the State's immunity in civil actions arising out of the use of a motor vehicle, during the period when such liability is covered by an insurance policy. 14 M.R.S.A. § 157. This exception applies only if the State chooses to purchase such insurance, and there is no legal requirement that the State make such purchase. As a result, a putative tort claimant seeking to recover damages from the State has traditionally had only two possibilities for relief - either direct payment of the claim in whole or part by legislative authorization, or legislative waiver of sovereign immunity so that the claimant may sue the State to attempt recovery of damages. Tort Liability of the State: A Proposal for Maine, 16 U. Maine L. Rev. 209-215 (1964).

The State may provide a third possible method of recovery for the bona fide tort victim through the purchase of liability insurance, such as that carried for the Maine State Building at the Exposition. There may be persuasive policy reasons for such purchase, especially where, as in the present case, the property is located outside the State and probably would be visited extensively by the general public. Nevertheless, there is no legal requirement that the State carry liability insurance even on property of this type.

It should be noted that if liability insurance is purchased, the majority rule is that such purchase has no effect upon the State's immunity from tort liability. Anno: "Liability or indemnity insurance carried by governmental unit as affecting immunity from tort liability,"

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68 A.L.R.2d 1437. Presumably this rule would be followed by the Maine courts if the issue was presented, except in the case of motor vehicle insurance where the waiver is made by statute as previously noted. In addition, this office has stated that although a State Department may not enter indemnity contracts without legislative consent, since such contracts would be an ineffectual waiver of sovereign immunity, a Department may purchase liability insurance with the approval of the Governor and Council. Atty. Gen. Rep. 1959-60, p. 34. This 1959 opinion did not state the basis for the latter point, though it was probably 5 M.R.S.A. § 1701, now repealed. In the interim, the Maine Insurance Advisory Board has been created, and that board ". . . shall provide insurance advice and services for the State Government and any department or agency thereof for all forms of insurance. . . ." 5 M.R.S.A. § 1728. It is suggested that you may wish to pursue further the question of liability insurance for the Maine State Building with the Insurance Advisory Board.

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S. KIRK STUDSTRUP  
Assistant Attorney General

SKS:mfe

cc: Harriman W. McKowan - Insurance Advisory Board