

MAINE STATE LEGISLATURE

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Tort Claims Act Employee Liability
8 M.R.S.A. 279

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DEPARTMENT OF THE ATTORNEY GENERAL
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May 24, 1978

Thomas Webster, Executive Secretary
Maine Harness Racing Commission
State Office Building
Augusta, Maine

In the Matter of: Sampling Procedures

Dear Mr. Webster:

You have asked for an opinion as to whether the State or veterinarians in its employ would be unduly exposed to liability while the latter are engaged in collecting specimens of body fluids from race horses in accordance with Title 8 ~~39~~, M.R.S.A., Section 279. This extraction process involves a drawing of blood from horses with a steel hypodermic needle.

I have assumed that your question centers around the tort liability which is manifested in the Maine Tort Claims Act, 14. M.R.S.A. §§8101 et seq., and have prepared this response accordingly: In order for the State to be liable for suit the following event, cited in pertinent part from the Act, and underscored in part for emphasis, must occur:

Sec. 8104 -- Exceptions to Immunity -- A governmental entity shall be liable for its negligent acts or omissions causing property damage, bodily injury or death in the following instances:

1. In its ownership, maintenance or use of any:
 - G. other machinery or equipment, whether mobile or stationary; . . .

I have assumed that some "equipment" is used in the blood sampling process. The liability which the State might incur would have to have been brought about by the negligent act or omission of the veterinarian in the course of the sampling process. There is no liability for non-negligent activity. Your question addressed itself to undue exposure "where normal precautions are taken". If the phrase may be interpreted as "the exercise of reasonable care", it follows that no liability in negligence would occur. If, in fact, there is some element of negligence in the blood extraction

process, both the State and its veterinarian/employee might be liable under the act.

Sec. 8105 of the act provides that damages against both the State and its employees shall not exceed \$300,000 for any and all claims arising out of a similar occurrence.

Sec. 8112 of the act provides that the State may defend an employee against a claim even where the State is not liable, provided that the alleged act occurred within the course or scope of his employment.

If the act upon which the negligence claim is based is one for which the State's immunity has been preserved, §8103, Sub-§3, provides that the employee shall be personally liable up to \$10,000. However, §8116 requires that the State purchase insurance or indemnify employees to the extent of this liability. Again, the employee must be acting within the course and scope of his employment.

Sincerely,

CHARLES D. DEVOE
Assistant Attorney General

CDD:sc

cc: Donald Alexander, Deputy